DOCUMENT RESUME

ED 291 834 UD 026 030

TITLE	Failure and Fraud in Civil Rights Enforcement by the Department of Education. Twenty-Second Report by the Committee on Government Operations Together with Separate and Additional Views. 100th Congress, 1st Session.
INSTITUTION	Congress of the U. S., Washington, D. C. House Committee on Government Operations.
REPORT NO	House-R-100-334
PUB DATE	2 Oct 87
NOTE	52p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Black Students; *Civil Rights; Compliance (Legal); Desegregation Plans; Elementary Secondary Education; Enrollment; *Failure; *Federal Regulation; Higher Education; *Law Enforcement
IDENTIFIERS	*Department of Education; *Fraud

ABSTRACT

Failure and fraud in civil rights enforcement by the Department of Education are reported. Investigation and enforcement of the law is the duty of the department's Office for Civil Rights (OCR), which has not followed procedural guidelines for these duties. Complaint cases have accumulated without resolution and few attempts have been made to withdraw federal monies from states and agencies which are not in compliance. Desegregation plans in school districts and institutions of higher education have been disregarded, causing a retrenchment in black enrollment and the number of black graduates. Efforts have been made to backdate some civil rights documents, improperly close discrimination investigations, and provide false information to a federal court. The Committee on Government Operations recommends that the OCR investigate these infractions thoroughly. Opposing views are presented by a group of 15 Representatives who believe that the work of the OCR is not as delinquent as has been suggested. The following issues are raised in support of the OCR: (1) there is a tremendous amount of material the OCR must review before making determinations; (2) failure to achieve a desegregation goal is not sufficient evidence of a violation; (3) OCR has taken corrective measures in the cases of back dating; and (4) OCR is not part of a scheme to mislead the court. (VM)

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100th Congress, 1st Session - - - - - - - - - - - House Report 100-334

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FAILURE AND FRAUD IN CIVIL RIGHTS ENFORCEMENT BY THE DEPARTMENT OF EDUCATION

TWENTY-SECOND REPORT

BY THE

COMMITTEE ON GOVERNMENT OPERATIONS

together with

SEPARATE AND ADDITIONAL VIEWS

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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OCTOBER 2, 1987.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, October 2, 1987.

Hon. JIM WRIGHT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's twenty-second report to the 100th Congress. The committee's report is based on a study made by its Human Resources and Intergovernmental Relations Subcommittee.

JACK BROOKS, *Chairman.*

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100TH CONGRESS *1st Session* | HOUSE OF REPRESENTATIVES | REPORT 100-334

FAILURE AND FRAUD IN CIVIL RIGHTS ENFORCEMENT BY THE DEPARTMENT OF EDUCATION

OCTOBER 2, 1987.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

TWENTY-SECOND REPORT

together with

SEPARATE AND ADDITIONAL VIEWS

BASED ON A STUDY BY THE HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE

On September 29, 1987, the Committee on Government Operations approved and adopted a report entitled "Failure and Fraud in Civil Rights Enforcement by the Department of Education." The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

Under the House of Representatives Rule X, 2(b)(2), the Committee on Government Operations is authorized to "review and study, on a continuing basis, the operation of Government activities at all levels with a view to determining their economy and efficiency." The committee has assigned this responsibility, as it pertains to the Department of Education (DOEd), to the Subcommittee on Human Resources and Intergovernmental Relations. Pursuant to its authority, the subcommittee began an oversight review of civil rights enforcement by the Department in June 1983.

The Department of Education's Office for Civil Rights (OCR) is responsible for enforcing Federal laws which prohibit discrimina-

tion based on race, national origin, sex, handicap, or age in all education programs and activities funded by the Federal Government. Specifically, this enforcement power is authorized by Title VI of the Civil Rights Act of 1964 (race, color, national origin); Title IX of the Education Amendments of 1972 (sex); Section 504 of the Rehabilitation Act of 1973 (handicap); and The Age Discrimination Act of 1975.

OCR is required to conduct investigations according to certain timeframes and procedures mandated under an order imposed by the U.S. District Court for the District of Columbia in *Adams* v. *Califano*. The original order was issued in 1977, and was modified twice in 1983 as a result of *Adams* v. *Bell*, a continuation of the case.

Under formal "delegation of authority" agreements with other Federal agencies, OCR is also empowered to enforce laws within its purview in matters involving non-educational Federal funds received by educational institutions. For example, OCR is responsible for enforcing Title VI in a school system whose only source of Federal funds may be a school lunch program funded by the Department of Agriculture.

The committee approved a report based on the subcommittee's initial investigation of OCR on September 30, 1985. The report found that OCR had not sought enforcement in cases where discrimination was found, and the committee recommended several measures to improve the enforcement process. The report also criticized OCR's 1985 decision to switch from a measure of actual success in evaluating higher education desegregation plans to a good faith standard whereby OCR would judge the plans based solely on the implementation of measures, regardless of their outcome. The change was extremely significant because, at the time of the committee's first report on DOEd's OCR, 10 State higher education desegregation plans, which were ordered as a result of the *Adams* case, were about to expire.

The 10 State plans expired at the end of 1985 and during the early months of 1986. On October 23, 1986, the subcommittee chairman asked OCR for numerous documents related to its review of the expired plans, including a status report on OCR's legally-required process for determining if the States in question had corrected the violations of law which had originally prompted the desegregation plans.

In the course of the investigation, subcommittee staff reviewed OCR regional office summaries of desegregation plan results for each State, OCR site-visit reports of all State-supported institutions of higher education covered by the 10 plans, the original goals and commitments of each plan, and the history of the 10 plans.

At the time of the subcommittee's review of OCR's handling of the expired desegregation plans, the subcommittee also received allegations that OCR staff had backdated investigative documents to make them appear in accord with timeframes mandated by the *Adams* order. Staff conducted a separate review of the backdating charges. During the inquiry, staff examined investigative reports about the backdating compiled by the Department of Education's Office of Inspector General and separate, internal reports prepared by OCR staff. Individual OCR officials were also interviewed as

part of the backdating investigation. The backdating affair involved investigations of discrimination complaints, and although the documents were covered by the *Adams* order, the cases did not involve higher education desegregation plans. Thus, the backdating investigation was not directly related to the desegregation review.

The concomitant investigations culminated in a hearing on April 23, 1987. Witnesses at the hearing included the Acting Assistant Secretary for Civil Rights at the Department of Education; counsels for the NAACP Legal Defense Fund, which represented the plaintiffs in the *Adams* case; representatives of minority students and teachers in Virginia and South Carolina, States with expired desegregation plans; and an OCR employee with direct knowledge of the backdating problem.

II. Background

A. The "Adams" Order and the Timeframes

As the primary Federal civil rights enforcement authority for recipients of Federal education funds, OCR is responsible for ensuring that recipients do not violate civil rights laws. The laws require OCR to investigate complaints of discrimination and conduct broad reviews in areas where discrimination may be a systemic problem. OCR uses two methods of investigating violations of civil rights laws. The primary method is the complaint investigation, which is conducted in response to allegations of discrimination from individuals and groups. In fiscal year 1986, OCR received 2,648 complaints.[1]

The second method of investigation is the compliance review. The reviews, which are initiated by OCR, examine discrimination issues related to the four laws for which OCR has enforcement responsibility. The subjects of the reviews are targeted by examining information gathered in surveys conducted by OCR. The surveys help OCR identify potential areas of systemic discrimination. OCR initiated 196 compliance reviews in fiscal year 1986.[2]

When violations of law are found, either by investigations or compliance reviews, and the violator is unwilling to voluntarily correct the problem, OCR has two enforcement methods at its disposal. The office can seek the termination of Federal funds to the violating district or institution by bringing the case before an administrative law judge. The process is called issuing a notice of opportunity for hearing. The second method available to OCR is referral of the case to the Department of Justice (DOJ), which can sue the violator to force compliance with the law.

The two methods of enforcement are rarely used by OCR. In its 1985 report, the committee found that, from 1981 to 1985, OCR found 2,000 violations of law, but issued only 27 notices of opportunity for hearing, and referred only 24 additional cases to the Justice Department. The committee noted that a large majority of violations are settled voluntarily at one of four stages of the investigative process. If the first stage, called early complaint resolution, fails, OCR enters into Pre-Letter of Finding (LOF) negotiations,

[1] Office for Civil Rights' Sixth Annual Report, fiscal year 1986, Department of Education, p. v.
[2] Ibid.

which allow the case to be settled voluntarily prior to the issuance of investigative findings. If Pre-LOF negotiations fail, a third stage allows for a voluntary settlement after the finding of discrimination is made. During administrative proceedings, the violator is given a final opportunity to correct the discrimination.

Because OCR has demonstrated a historic recalcitrance towards enforcing civil rights laws, the office is virtually controlled by the *Adams* decision, a U.S. Court order issued because OCR had refused to use its enforcement authority where illegal discrimination was found.

The *Adams* case began in 1969 when OCR sent letters to 10 southern and border States informing them that they had failed to eliminate the vestiges of racial segregation in higher education systems. Five States ignored OCR's letters, and the other five submitted inadequate desegregation plans.

OCR did not require the 10 States to submit adequate desegregation plans. On July 3, 1969, Department of Health, Education, and Welfare (HEW) Secretary Robert H. Finch and Attorney General John H. Mitchell jointly announced a new policy to minimize the number of cases where Federal funds are cut off from schools in violation of Title VI. The policy also revoked previous Title VI deadlines for complete desegregation by the 1969–1970 school year, at the latest. What had been apparent was now clear public policy: OCR would not take action against illegal segregation.

On October 19, 1970, the NAACP Legal Defense and Education Fund (LDF) filed suit, alleging six different causes of action against Elliot Richardson, the Secretary of HEW, and J. Stanley Pottinger, then the Director of the Office for Civil Rights at HEW, which was moved to the Department of Education upon its creation in 1980. The suit charged HEW with refusing to take action against school districts under court order requiring desegregation; refusing to enforce Title VI against higher education systems; refusing to initiate enforcement proceedings against school districts that had reneged on existing desegregation plans; refusing to terminate Federal funds to school districts that had been the subject of enforcement proceedings for more than two years; and refusing to abide by Supreme Court decisions in evaluating desegregation plans.

Paragraph ten of the complaint summarized the basis for the suit:

> Apart from their individual merits, the six causes of action are symptomatic of a general and calculated default by HEW in enforcement of Title VI since its passage in 1964. This failure to enforce Title VI and the Fifth Amendment's guarantee against Federal assistance to racial segregation and discrimination has been widespread, affecting thousands of public schools, colleges, and universities across the country.

On November 16, 1972, the court ruled in favor of the plaintiffs, and issued on February 16, 1973, a six-part order requiring OCR to begin enforcement against the 10 States found in violation of Title VI; to enforce Title VI against the school districts that had reneged on their desegregation plans; to take action against 85 school districts in violation of a previous Federal court decision; to imple-

ment a program to enforce Title VI in vocational and special education programs; to monitor school districts under Federal court order; and to report to the court on a regular basis all enforcement proceedings instituted by OCR.

The plaintiffs later discovered evidence in the depositions of Federal officials that HEW had not fully complied with the order, and filed another motion, seeking further relief. On March 14, 1975, the *Adams* court entered its First Supplemental Order, which required OCR to contact more than 100 school districts still in violation of a previous Federal court decision; begin enforcement proceedings against 6 school districts in violation of the Emergency School Aid Act; and, for the first time, the court imposed timeframes for the internal processing of Title VI violations. On July 17, 1975, the court eased the deadline requirements for cases that had been pending prior to the imposition of the March 14 order.

In 1976, new classes of plaintiffs were added as parties to the litigation. Four parents of Mexican-American students attending public schools in Region Six were granted the right to intervene, and the Women's Equity Action League, after an appeal, was also allowed to intervene, alleging that OCR was not enforcing Title IX. In 1977, the National Federation for the Blind was granted plaintiff's status. The new plaintiffs enabled the litigation to extend to matters involving Section 504 and Title IX, as well as Title VI.

On April 1, 1977, in response to a new plaintiff's motion, the court ordered HEW to notify six States that post-secondary education desegration plans it had earlier accepted were inadequate, and did not comply with HEW criteria regarding desegration plans.

On October 5, 1977, in response to a motion from the plaintiffs charging that OCR had not filled staff positions, the court found that HEW had "not taken every feasible step to obtain resources which would facilitate coming into compliance with the Court's order of June 14, 1976." The court ordered HEW to expand its resources. The court also asked the parties to negotiate a settlement on the use of resources and timeframes.

A settlement was negotiated which culminated in a Consent Order approved by the court on December 29, 1977. The previously ordered timeframes were adopted as part of the Consent Decree without major changes. OCR's reporting requirements were expanded, and the provisions for the elimination of backlogged complaints and the exemption of certain cases were retained in the Consent Decree. The decree also required procedural steps to be followed after the receipt of a complaint.

OCR's initial efforts to comply with the 1977 Consent Order were successful. The backlog of pre-order cases was nearly eliminated, but the success was short-lived. OCR began consistently missing the *Adams* deadlines in 1980, and by 1981, a backlog of 170 old complaints, some of which had been pending for as long as nine years, remained. The plaintiffs returned to court, seeking stronger relief, while at the same time, the Federal Government sought to vacate the 1977 order. The court rejected the Government's motion, and issued a new order on March 11, 1983, which had the effect of strengthening the 1977 order. The 1983 order also required OCR to initiate enforcement on numerous old cases where violations of law

had been found. OCR is currently attempting to have the *Adams* order rescinded.

Until the 1983 order, OCR did not seek enforcement in individual cases where violations of law were found. Julius Chambers, Director of the NAACP Legal Defense Fund, testified in 1985 about OCR's traditional reluctance to enforce civil rights laws:

> There has been bipartisan anathema to employing even the threat of fund termination by initiating the administrative enforcement process when voluntary negotiations fail. But it is only the willingness to use the stick of Title VI that makes the carrot—voluntary compliance—effective.
>
> In the early years (1964–1968) of Title VI, the real potential of losing federal money was enough to desegregate thousands of Southern schools. After the first *Adams* order in 1973, OCR began initiating administrative actions against Southern districts whose desegregation plans did not pass constitutional muster. After the 1983 *Adams* order set deadlines for securing compliance in pending cases, OCR took 23 cases to administrative law judges and referred 18 cases to the Department of Justice. That order generated more enforcement proceedings than had occurred in all of the previous decades.[3]

The committee's 1985 report, "Investigation of Civil Rights Enforcement by the Office for Civil Rights at the Department of Education," found that, after the 1983 order was issued, OCR used new and innovative methods to circumvent the order. One such ruse involved referring cases to DOJ, which was not covered by the *Adams* order. In 1985, 24 cases, nearly half the pending enforcement caseload at OCR, had been referred to DOJ. The committee found that 16 were idle, 5 were sent back to OCR, 1 was involved in a pending suit, and 2 were resolved by the entering of consent decrees. The cases were as old as six years, yet findings of illegal discrimination had not been addressed. The committee concluded that "the referral of cases to DOJ has proven to be an effective method of circumventing the *Adams* order and escaping the court's jurisdiction."[4]

B. THE EXPIRED DESEGREGATION PLANS

In 1969 and 1970, HEW conducted compliance reviews of State systems of higher education. Subsequently, the HEW OCR notified 10 States (Louisiana, Mississippi, Oklahoma, North Carolina, Florida, Arkansas, Pennsylvania, Georgia, Maryland, and Virginia) that the vestiges of their previously segregated, dual higher education systems remained, in violation of Title VI. The States were notified of their obligation to submit desegregation plans within 120 days.

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[3] Hearings before a subcommittee of the Committee on Government Operations, House of Representatives, "Investigation of Civil Rights Enforcement by the Department of Education," July 18 and September 11, 1985, pp. 11–12.

[4] Investigation of Civil Rights Enforcement by the Office for Civil Rights at the Department of Education," House Report 99–458, Committee on Government Operations, U.S. House of Representatives, December 30, 1985, p. 11.

Five States (Louisiana, Mississippi, Oklahoma, North Carolina, and Florida) ignored HEW's request to submit plans. The remaining five States submitted plans which HEW found to be totally unacceptable. However, HEW took no further action against any of the 10 States.

The plaintiffs in the *Adams* case filed suit, and on February 16, 1973, the U.S. District Court in Washington, D.C., ordered HEW to commence enforcement action against the 10 States.

The Federal Government appealed the decision, but an appellate court ruled that HEW must negotiate acceptable desegregation plans with the States, and that the plans must be approved by June 21, 1974, or enforcement procedures must be instituted by that date.

Prior to the deadline, OCR transferred the Louisiana and Mississippi cases to DOJ. In June 1974, OCR accepted desegregation plans from the remaining eight States.

The *Adams* plaintiffs returned to court in 1975, charging that the desegregation plans were insufficient and were not achieving the desired results. The court agreed, ruling in April 1977 that the 1974 plans did not meet minimum requirements for desegregation. The court ordered OCR to publish criteria specifying the ingredients of an acceptable desegregation plan. On July 5, 1977, HEW published criteria, which were revised one month later after input from the States. The criteria were revised again and, on February 15, 1978, HEW issued the "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education."

The plans negotiated by OCR contained specific goals based on the court-ordered criteria agreed to by the States. A Blue Ribbon Panel of members from the higher education community, interested civil rights groups, and HEW officials was assembled by the Secretary of HEW to assist in the development of the criteria. The criteria established by the panel required numerical goals in the recruitment and enrollment of students, hiring of faculty, and appointments to school governing boards.

On February 15, 1978, OCR accepted revised desegregation plans, based on the new criteria, from six States (Arkansas, Florida, North Carolina Community College System, Oklahoma, Virginia, and Georgia).

In 1980, the *Adams* plaintiffs filed a new motion with the court, charging that OCR had not taken action against other States found to be in violation of Title VI (Alabama, Delaware, South Carolina, Missouri, Kentucky, and West Virginia). Alabama and Ohio were referred to DOJ, and OCR accepted desegregation plans from the remaining four States in 1981.

The plans for the State systems of higher education involved in the *Adams* litigation, excepting the cases referred to DOJ, expired during the 1985-86 school year. However, OCR is still responsible for enforcing Title VI in those States. If violations of the law are found, further enforcement action may be necessary.

III. FINDINGS

A. THE 10 STATES WHOSE DESEGREGATION PLANS EXPIRED HAVE NOT ELIMINATED THE VESTIGES OF ILLEGAL SEGREGATION, YET DOED HAS TAKEN NO REMEDIAL ACTION TO ENFORCE THE LAW

The subcommittee reviewed the history of the expired desegregation plans—including the original findings of violation of Title VI—the OCR regional summaries of each expired plan, and the OCR staff site visits of every institution covered by the plans. Based on this review, the committee concludes that the original violations of law have not been corrected, and the factors that OCR found to constitute illegal vestiges of segregated systems of higher education remain.

This view was acknowledged by OCR staff as early as November 15, 1984. In a memorandum to the Assistant Secretary for Civil Rights, Frederick T. Cioffi, the Acting Director for Policy and Enforcement in OCR, wrote:

> In order for OCR to fulfill its law enforcement responsibilities with respect to a state in which OCR previously found a violation, OCR must either (1) find that there are appropriate commitments and plans—or, arguably, reasonable expectations—for continued progress, (2) find that the violation has been remedied, or (3) take formal enforcement action. In order to make the second ("final compliance") finding, OCR's position has been that it must find that the remedy has achieved "elimination of the vestiges of the dual system." OCR has said, for example, that, with respect to student enrollment, the goal is a situation in which "student choice is no longer determined by the effects of the dual system." *Because the state systems with which it has been dealing have not heretofore even approximated what might be considered the elimination of the vestiges of dual systems, OCR has never defined how it would decide when that complete elimination of vestiges has been achieved in a state system.* In short, OCR has not defined the minimum requirements for a finding that the violations found in 1967-70 have been remedied.[5] [Emphasis added.]

The desegregation plans were designed to correct inequities resulting from the previous dual systems of higher education in the 10 States. The inequities included disparities between white and black students in terms of enrollment, between white and black faculty in terms of faculty employment, and between white and black administrators in terms of service on school governing boards. These problems were outlined by the subcommittee chairman in an exchange with the OCR Acting Assistant Secretary for Civil Rights.

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[5] "Fall 1985 Expiration of Current Plans of First Tier States," Memorandum from Frederick T. Cioffi, Acting Director for Policy and Enforcement Service, to Harry M. Singleton, Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Department of Education, November 15, 1984.

> Mr. WEISS. Now the status reports show that the States still have the problems OCR found to be illegal in 1969 and 1970. The reports find a disparity between blacks and whites in student college enrollment rates. There is a disparity between black and white student retention rates. There is a drastic shortage of black faculty. Entrance rates to graduate and professional schools for blacks are still too low. Traditionally black institutions still lack resources of traditionally white institutions. There are differences in degree. In some cases, there has been some improvement since 1969, and in some cases, the situation is worse, but these are clearly the findings of the regional status reports.
>
> Do you have any reason to dispute the facts compiled by the OCR regional offices?
>
> Ms. CORO. No, Mr. Chairman, and those facts are in the State reports. We have not changed those facts. That information that you cited still appears in the State factual reports.[8]

The civil rights problems inherent in the higher education systems of the 10 States led to a situation which has come full cycle since 1969, when the first findings of illegalities were made by the Federal Government. Forced by progressive civil rights laws enacted by Congress, HEW found conclusive evidence that the illegal vestiges of the segregated systems of the past still existed, and were denying minority students their legal right to higher education. The Executive Branch was unwilling to enforce the laws, so the findings went unaddressed until the *Adams* suit was filed to require HEW to take corrective measures; in the case of the 10 States, desegregation plans. Now those plans have expired, and the Federal Government once again appears reluctant to enforce Title VI compliance in the 10 States. The players in the *Adams* drama are again poised on the brink of renewing their legal contest.

In reviewing the plans, the committee believes it is important to remember that each plan was designed to eliminate the vestiges of *de jure* (illegal), segregated systems of higher education. Each plan had goals, agreed to by the States themselves, whereby the elimination of the vestiges would be achieved.

The goals in each plan were based on criteria, whose development was ordered by the *Adams* court. The criteria contain numerical goals, which include the following:

> The proportion of black high school graduates throughout each state shall be equal to the proportion of white high school graduates entering two-year and four-year undergraduate institutions of higher education.
>
> There shall be an annual increase in the proportion of black students in traditionally white four-year institutions of higher education.
>
> Disparity between the proportion of black high school graduates and white high school graduates entering traditionally

[8] Hearing before a subcommittee of the Committee on Government Operations, House of Representatives, "Civil Rights Enforcement by the Department of Education," April 23, 1987, hereinafter referred to as "Hearing," p. 300.

white institutions of higher education will be reduced by at least 50 percent by academic year 1982-83.

The proportion of black state residents who graduate from undergraduate schools and enter graduate schools shall be equal to the proportion of white state residents who enter such schools.

Increase the total proportion of white students attending traditionally black institutions.

Expand mobility between two-year and four-year institutions as a method of meeting the goals.

There are similar goals for reducing racial disparities in the hiring of faculty and appointments to school governing boards.

According to OCR, the States did not meet the desegregation goals they established for themselves. For example, Arkansas, Delaware, Georgia, Oklahoma, South Carolina, and Virginia set the goal of having the proportion of black high school graduates equal the proportion of white high school graduates entering two- and four-year colleges. None of these States met the goal, and only two, Delaware and South Carolina, showed any progress toward meeting the goal.[7]

Ten States set goals for hiring black faculty at the doctoral level. None met the goals. The State also established goals for hiring black faculty at the nondoctoral level. Two States, Georgia and Oklahoma, met one numerical goal in that category, but missed all others.[8]

Nine States set goals for hiring black administrators at the doctoral levels. Delaware, Florida, Virginia, and West Virginia met their goals. Also, the nine States set goals for hiring black administrators at the nondoctoral level. Six States met only one goal in that category.[9]

1. The States' Record Of Higher Education Desegregation

a. Arkansas

The disparity between black and white student entrance rates at Arkansas higher education institutions increased from 10.1 percent in 1978-79 to 13.1 percent in 1985-86.[10]

The percentage disparity between blacks and whites in graduate and professional programs also increased in every major field of study from 1978 to 1985.[11]

Hiring of black faculty increased between 1978 and 1985, but fell short of projected goals. Traditionally white institutions (TWI's) needed 38 additional black nondoctoral faculty to reach the desegregation plan's employment projections. Also, 12 more black faculty members were needed to reach employment projections for positions requiring a doctorate.[12]

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[7] Hearing, p. 333.
[8] Ibid.
[9] Ibid.
[10] "Comprehensive Report for Arkansas," Taylor D. August, Director, OCR, Region VI, May 14, 1986, p. 18.
[11] Ibid., p. 54.
[12] Ibid., p. 68.

The percentage of blacks in nonacademic jobs at higher education facilities marginally increased from 20.9 percent in 1978 to 21 percent in 1986.[13]

Black representation on the State Board of Education increased from 13.3 percent in 1978 to 20 percent in 1986, but black membership on the boards of four-year institutions remained the same during this period. Four of six two-year institutions have no black representation on governing boards.[14]

b. Delaware

The attrition rates (the rates at which students leave school without obtaining a degree) for blacks is greater than for whites at State schools, and the disparity has increased from 1981 to 1985. "This development warrants some action to determine the reasons for these changes and to develop remedies for reducing black student attrition and the disparity in the black and white rates." [15]

In 1985, 1,370 blacks and 5,921 whites graduated from high school. The entry rate was 35.5 percent for black and 49.1 percent for whites. The entrance disparity was 13.6 percent. In 1981, the entrance rate disparity was 14.3 percent. Although there was marginal improvement, the goal of the State desegregation plan, committed to the objective of having no disparity, was not met.[16]

The State eliminated the disparity between white and black graduates of four-year institutions entering graduate schools.[17]

The State has met its faculty hiring goals, but has not met its goals for appointing blacks to school governing boards.[18]

c. Florida

Florida committed to enroll, as first-time-in-college (FTIC) students in the public community colleges and universities black and white student proportions equal to the high school student graduate population. The State failed. Between 1982 and 1986, the disparity rate between black public high school graduates and black FTIC students increased from 8.73 percent to 8.87 percent. Between 1982 and 1985, the State University System disparity rate improved from 6.08 percent to 5.18 percent. However, in 1985 the State System disparity rate grew to 6.75 percent. From 1982 to 1985, the number of black FTIC freshman increased from 1,323 to 1,715, but the 1986 number decreased by 5.5 percent to 1,620. Between 1982 and 1986, the Community College System disparity rate worsened, increasing from 9.26 percent to 9.45 percent.[19]

The State plan commits the eight predominantly white universities in Florida to removing 50 percent of the disparity between the aggregate pool of black high school graduates and community col-

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[13] Ibid., p. 81.
[14] Ibid., p. 85.
[15] "Final Status Report on the State of Delaware's Title VI Compliance Plan for Equal Opportunity in State-Supported Institutions of Higher Education," Jeanette J. Lim, Acting Director, Office for Civil Rights, Region III, U.S. Department of Education, May 30, 1986, p. 30.
[16] Ibid., pp. 39–41.
[17] Ibid., p. 93.
[18] Ibid., pp., 101 and 109.
[19] "Florida *Adams* Status Report for the 1984–85 Academic Year and Fall 1985," Jesse L. High, Acting Regional Director, Office for Civil Rights, Region IV, U.S. Department of Education, pp. 18–19.

lege graduates and the proportions of black students entering the predominantly white schools. In 1985, no university in the State met its goal for enrolling black FTIC and transfer students. In 1984, six universities exceeded their goal, an accomplishment attributed to a significant decrease in the number of white FTIC students from 21,733 in the fall of 1983 to 12,031 in the fall of 1984 rather than an overall increase in black enrollment. The enrollment of black students in the community colleges decreased from 19,432 in the fall of 1982 to 19,018 in the fall of 1985, while white enrollment decreased from 168,447 in the fall of 1982 to 163,742 in the fall of 1985. In 1985–86, the community college system enrolled 24.09 percent of the white high school graduates and 15.94 percent of the black high school graduates. The disparity rate shows that from 1982 to 1985 the system did not achieve the objective to enroll black high school graduates at the same rate as white high school graduates.[20]

The Florida plan states: "Each institution will assess its admission policies in order to identify any barriers which could hinder the institution in accomplishing its contribution to the System goals for equalizing educational opportunity."[21] The plan has also failed in this regard. The percentage of black students admitted under special alternative admission standards designed to compensate for the vestiges of illegal desegregation has declined from 51.3 percent in 1982 to 37.1 percent by 1986.[22]

The plan commits the State to enrolling a minimum of 8 percent black students to community college allied health programs. Of the 29 allied health programs taught at community colleges, only 19 programs met the goals in 1983–84. That number fell to 11 a year later.[23]

The State University System promised to increase the enrollment of black students entering the upper division of predominantly white universities until the proportion approximates the proportion of blacks who complete lower division work in universities and community colleges. OCR had limited information available about this goal. However, the College-Level Academic Skills Test (CLAST), which must be passed in order for students to progress to upper division classes, may be a measure of achievement in this area. Based on the 1985–86 standards for the test, the number of blacks passing all subtests of each test decreased from 67 percent in September 1984 to 63 percent in October 1985. OCR notes:

> If students who took the October 1985 test were required to meet either the 1986–89 standards or the 1989 standards, the passing rate on all subtests of all students and of black students would decline significantly. The percentage difference between the passing rate on all subtests of all students and of black students in the October 1985 test administration was 23.8%. Applying the 1986–89 standards, the percentage spread between all students and black students increased to 27.8%. The difference is 27% when the

[20] Ibid., pp. 21 and 23.
[21] Ibid., p. 31.
[22] Ibid., p. 33.
[23] Ibid., p. 39.

> 1989 standards are applied in the same group. Therefore, in the immediate future, the effect of the CLAST on black students in comparison to all students is expected to worsen.[24]

Since the implementation of CLAST, the number of black associate degree recipients from community colleges decreased from 1,748 in 1984 to 1,293 in 1985. Also, the number of black associate degree transfers to universities decreased from 383 in 1984 to 265 in 1985.[25]

Florida has also not met its plan commitment to increase the mobility of blacks between two-year and four-year institutions. OCR reports:

> a decrease in the pool of associate degree recipients applying to traditionally white institutions . . . these students were accepted at a lower rate in 1985–86 than in 1983–84. From 1983–84 to 1985–86, the total number of within-state black transfer applicants to TWI's decreased 8.2% from 1285 in 1983–84 to 1180 in 1985–86. The number of black transfer students accepted decreased 9.7% from 854 in 1983–84 to 771 in 1985–86.[26]

The State has also failed in its commitment to increase black enrollment in graduate and professional programs for students from the State University System. In academic year 1981–82, 1,244 blacks received undergraduate degrees, representing 7.43 percent of the total State graduating class. The following year, blacks represented 6.19 percent of all students entering graduate and professional schools. In 1984–85, blacks represented 8.29 percent of all undergraduate degree earners. But blacks made up only 5.27 percent of the next year's graduate and professional school enrollment. The disparity shows that, despite the number of black recipients of bachelor's degrees increasing significantly and the number of blacks entering as first-time graduate and professional students more than doubling from 1984 to 1986, their advancements lag behind those of white students in graduate and professional programs.[27]

According to OCR, black students in Florida, over time, have remained in school at lower rates than white students. For FTIC and junior college transfer students entering school in 1980, the retention rate for blacks was 12.3 percent less than for white students after four years. For FTIC classes entering in 1982, the retention rate for blacks, after two years, was 2.8 percent less than that of white students, and for junior college transfer students entering school in 1982, the retention rate after two years was 5.1 percent less than that of white students.[28]

The State plan stipulates goals for the hiring of black faculty, administrators and school board governors. The goals for professional categories not requiring doctorate degrees were not achieved in any

[24] Ibid., p. 46.
[25] Ibid., p. 47.
[26] Ibid., p. 50.
[27] Ibid., p. 55.
[28] Ibid., p. 69.

year of the plan by the State University System. The Community College System, however, has met its goals in this category. The University System has not met any goals in the area of faculty hiring requiring a doctorate degree, but has met its goals in the doctoral area with respect to executive and professional hires.[29] There is not wide representation of blacks on governing boards. OCR found:

> The Board of Regents (the SUS governing body) consists of 12 members and one (8.33%) is black. Each of the 28 colleges has a Board of Trustees with membership ranging from four to nine members and black representation ranging from 11% to 29%. The majority of the colleges have one black board member. South Florida and Tallahassee each have two black board members, and Florida Keys, Indian River, and Pasco-Hernando have no black board members.[30]

d. Georgia

The State failed in its main plan objective of reducing the disparity between black and white student enrollment, proportionate to their respective populations of high school graduates. In 1978, at the time of the plan's implementation, the disparity between white and black first-time student enrollment in the Georgia system of higher education was 16.83 percent. It fluctuated during the succeeding years, and was 19.88 percent in 1985–86.[31]

Georgia was also unsuccessful in its desegregation plan objective of increasing first-year black student enrollment in predominantly white senior colleges and universities. According to OCR, Georgia committed to increasing first-year black students at predominantly white institutions by 1,579 students from 1978 to 1983. The increase, if accomplished, would have resulted in approximately 3,118 first-year black students by 1982–83. The State fell far short of the goal, with 1,544 first-year black students enrolled in mainly white institutions in 1983, and 1,598 in 1985. Moreover, the percentage of first-year black students in such institutions fell from 12.78 percent in 1978 to 12.66 percent in 1985.[32]

The overall percentage of black students at TWI's increased, from 8.93 percent in 1978 to 9.56 percent in 1985 at universities, and from 11.76 percent in 1978 to 11.97 percent in 1985 at senior colleges. However, the State fell short of its respective goals of 12.77 percent by 1982 for universities and 16.70 percent by 1982 for senior colleges. The percentage of black students at junior colleges increased slightly from 12.04 percent in 1978 to 12.47 percent in 1985. This figure is short of the plan's goal of 16.65 percent for junior colleges. If enrollments at traditionally black institutions (TBI's) are considered, the overall percentage of black students in the entire university system has declined since 1978, from 15.18

[29] Ibid., pp. 80–83.
[30] Ibid., p. 99.
[31] "Georgia *Adams* Status Report for the University System of Georgia," Jesse L. High, Acting Regional Director, Office for Civil Rights, Region IV, U.S. Department of Education, p. 35.
[32] Ibid., p. 37.

percent to 14.76 percent in 1985, a figure less than the intended goal of 16.42 percent.[33]

The State also did not meet its goal of 14.62 percent of black students enrolled at four-year TWI's by 1982. In 1985, the total percentage of black students enrolled at four-year TWI's was 10.63, beneath the goal, but an increase above the 9.99 percent in 1979.[34]

Georgia committed to reducing the attrition rate disparity between white and black students but the State did not meet this goal. According to OCR, of 18 four-year institutions in the State system, the attrition rate for blacks increased in all but four colleges or universities.[35]

Georgia is losing ground in its campaign to maintain graduate school parity. According to OCR figures, the number of black students going on to graduate study in 1978 was 531, or a rate of 48.67 percent of the total graduates. In 1985, the number of undergraduate degree holders going on to graduate school fell to 291, a rate of 23.02 percent of the overall pool of students with undergraduate degrees. The comparable figure for white students showed that 3,490 students holding undergraduate degrees were continuing their education, a rate of 30.83 of the pool in 1978. In 1985, 2,315 of the pool went to graduate school, a rate of 21.42 percent.[36]

The rate of blacks with undergraduate degrees entering professional studies was 2.66 percent in 1978, compared to 3.32 percent in 1985. The rates for whites were 4.50 percent in 1978 and 4.83 percent in 1985.[37]

In regard to hiring practices, the State made the following commitments:

> The proportion of black faculty and administrators at each institution and on the staff of the governing board in positions not requiring the doctoral degree shall at least equal the proportion of black students graduating with appropriate masters degrees from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.
>
> The proportion of black faculty and administrators at each institution and on the staff of the governing board in positions requiring the doctoral degree shall at least equal the proportion of black individuals with credentials required for such positions in the relevant labor market area.
>
> The proportion of black non-academic personnel (by job category) at each institution and on the staff of the governing board or any other state higher education entity shall at least equal the proportion of black persons with the credentials required in the relevant labor market area.[38]

[33] Ibid., p. 40 and 41.
[34] Ibid., p. 42.
[35] Ibid., p. 52.
[36] Ibid., p. 54
[37] Ibid.
[38] Ibid., pp. 65–66

The percentage of black school executives, administrators, and managers in positions not requiring a doctoral degree at TWI's decreased slightly from 2.26 percent in 1978 to 2.24 percent in 1985 at State universities. The plan goal for 1985 was 4.20 percent. The percentage of blacks in these positions at senior colleges increased from .58 percent in 1978 to 4.09 percent in 1985, just short of the goal. The percentage for junior colleges was 0 percent in 1978 and 3.09 percent in 1985. Three of the 11 senior colleges had no blacks in these jobs, seven had only one, and one had two. Eleven of the 14 junior colleges had no blacks in such positions. The remaining three had only one.[39]

The percentage of blacks in executive, administrative and management positions requiring a doctoral degree at TWI's increased from 3.31 percent in 1978 to 5.79 percent in 1985 at universities, from 3.44 percent to 7.24 percent at senior colleges, and from 3.51 percent to 10.71 percent at junior colleges. Only the junior colleges met the 1985 goal of 7.29 percent.[40]

Black faculty holding doctoral degrees represented 1.13 percent of such positions at universities in 1978 and 2.10 percent in 1985. They represented .55 percent of the nondoctoral faculty positions at senior colleges and junior colleges in 1978 and 3.38 percent in 1985. The goal for 1985 was 4.20 percent.[41]

Black faculty not holding doctoral degrees increased marginally from 3.40 percent to 3.95 percent of faculty at universities from 1978 to 1985. They rose from 4.57 percent to 6.32 percent between 1978 and 1985 at senior colleges and from 4.68 percent to 8.21 percent for the same period at junior colleges. Only junior colleges met the goal of 7.29 percent for 1985.[42]

OCR statistics on the hiring of new black administrators and faculty show a reversal of the modest gains made by the State in some areas. Hiring of black administrative employees, as a percentage of the total number of hires in new positions, fell from 16.31 percent in 1984 to 10.22 percent in 1985.[43]

At the time of the plan's implementation in 1978, the Board of Regents, which governs the Georgia system of higher education, had two black members on its fifteen-member board. They now have three. The composition of the board, according to OCR, consists of ten white males, two white females, two black males and one black female.[44]

e. Missouri

The State desegregation plan covers three schools. For example, Missouri made a commitment to increase annually the number and percentage of black undergraduate students, the University of Missouri-Columbia (UMC), setting a goal of 928 students, representing 5.4 percent of the student population by 1985. OCR data show that

[39] Ibid., p. 68.
[40] Ibid., p. 69.
[41] Ibid., p. 70.
[42] Ibid., p. 71.
[43] Ibid., p. 74.
[44] Ibid., p. 75.

the State had 683 students, or 3.8 percent of the undergraduate enrollment, in 1985. The State did not meet this commitment.[45]

In order to reduce the disparity between black and white student enrollments, Missouri also committed to decrease by at least 50 percent the difference between the proportion of black and white high school graduates entering UMC by 1985. The goal was to have blacks represent 7 percent of the first time entering freshmen. OCR data shows that UMC did not meet this goal, with only 3.4 percent of the incoming freshmen being black students, a decrease of the previous year's figure of 3.9 percent.[46]

UMC agreed to attain a percentage of black students enrolled in graduate courses equal to the current national percentage of bachelor's degrees awarded to black students, a goal of 6.4 percent by 1985. UMC did not meet the goal. Blacks represented 2.6 percent of its graduate students.[47]

UMC met its goals of increasing the number of first-time black enrollees in its professional schools.[48]

However, the school did not reach the retention goals outlined in the desegregation plan for black undergraduate students. The retention goal for 1984-85 was 59.4 percent, but the actual progression rate was 50.1 percent for blacks, while it was 66.8 percent for white students. OCR data for professional programs show minimal and no retention rate disparities between black and white students in master's and doctoral programs, respectively. The retention disparity was 26.8 percent in the law school, 9.2 percent in medicine, and there was no disparity in veterinary medicine.[49]

The University of Missouri-Rolla (UMR) also failed to meet the goals established in the State desegregation plan. UMR committed to a 1984 goal of 5.29 percent of the student population being black. The actual percentage of blacks in 1984 was 2 percent. In addition, UMR set a goal of 7.2 percent of the first-time entering freshmen being black in 1984. The actual figure was 4.2 percent, a rate that fell to 3.7 percent in 1985.[50]

UMR agreed to increase its enrollment of black graduate students to attain:

> the proportionate representation of blacks entering UMR's graduate programs as corresponds with the proportionate representation of blacks receiving bachelor's degrees in the state system in disciplines in which UMR offers graduate programs.[51]

The school was unsuccessful. It set a goal of having only 2.10 percent of the graduate school enrollment as black students in 1985. The actual number of blacks in graduate programs that year represented .7 percent of the total enrollment. UMR committed to in-

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[45] "Missouri Higher Education Desegregation—Status Reports," Judith E. Banks, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region VII, June 5, 1985, p. 1.
[46] Ibid., p. 2.
[47] Ibid.
[48] Ibid., p. 3.
[49] Ibid., pp. 13-15.
[50] Ibid., p. 1, Part II.
[51] Ibid., p. 2, Part II.

creasing the number of black transfer students to 3.1 percent by 1985, a goal it met.[52]

UMR also set a retention goal of having blacks represent 4.79 percent of its bachelor degree recipients in 1984. It did not meet the goal; only 2 percent of its graduates that year were black. The retention rate disparity between black and white students in 1984 was 12 percent, a decrease of 4.5 percent from 1980.[53] The retention rate goals for graduate student degrees were low, involving a handful of students. Nevertheless, the goals were not met.[54]

An OCR status report described UMR faculty hiring inequities for blacks:

> UMR set goals for its non-doctoral faculty based on the facts that no additional non-doctoral positions are anticipated and the high stability of present incumbents would indicate that few vacancies will occur. Where turnover is anticipated, goals were set. UMR's plan established goals for the number of black doctoral faculty to be hired, which, when accumulated, equals five persons after three years. . . .
>
> During the 1984-85 and 1985-86 academic years, UMR had 63 faculty positions available. Of these positions, 48 were positions in the School of Engineering. No black applicants were employed. In most instances, no black applicants applied. In those instances where black individuals did apply, other more qualified applicants were selected for the position. Currently, one of the 259 doctoral degree faculty members is black. Of the 51 non-doctoral degree faculty, none are black individuals.[55]

Southeast Missouri State University (SEMO) was more successful. It achieved its undergraduate enrollment goals, as outlined in the desegregation plan. It set a goal of 4.7 percent for the 1985 year and had an actual black enrollment percentage of 7.1 percent. The school also exceeded its goal of 13.9 percent of black graduate school enrollment with a real percentage of 14.78 percent in 1985.[56]

The retention rate disparity between black and white students increased from 15.1 percent in 1981 to 15.9 percent in 1985. However, SEMO appears to have reached its plan goal of a 35-percent retention rate for black students. The rate was 42.6 percent in 1984-85.[57]

f. North Carolina (Community Colleges)

OCR found that North Carolina had failed to fulfill its commitment to increase the number of black students transferring from community colleges to four-year institutions. According to OCR:

> An analysis of fall data over the previous six years shows that the system has fallen below its goal of enrolling

[52] Ibid.
[53] Ibid., p. 6, Part II.
[54] Ibid., p. 8.
[55] Ibid., pp. 8-9, Part II.
[56] Ibid., pp. 2-3, Part III.
[57] Ibid., p. 8, Part III.

> an additional 171 black students annually in college transfer programs. Data provided in the OCR 11,000 Series Report for the current year shows that the System has not met its 1985-86 goal to annually increase the enrollment of black students in the College Transfer Program.[58]

According to OCR, the "cumulative transfer enrollment deficiency of 1,442 [in 1985] surpassed the 1978 base data enrollment of black students (1,044) by 398 students." [59] In other words, in 1985, the State needed twice the number of students enrolled in 1978 to meet its goal of 2,241 transfer students. In 1985, the actual enrollment fell to 799 students. There were 1,044 students enrolled in 1978.[60]

At the same time, the number of white students participating in transfer programs had increased between 1978 and 1985, from 5,428 to 5,706. The percentage of total enrollment for white students in transfer programs had also increased, from 83 percent to 86 percent, during the same time period.[61]

State officials told OCR that economic and employment factors were to blame for the failure to meet the goals. However, OCR found other causes. For example, the 1978 State desegregation plan committed $12 million each year, from 1978 to 1975, to improve transfer opportunities. The State did not provide the moneys promised, instead appropriating $514,848 for the transfer program in 1980, and $200,000 in 1983.[62]

OCR also found:

> Systemwide figures . . . show that the percentage of blacks among transfer students has declined from 13.41 percent in 1978 to 11.52 percent in 1984. Absolute numbers of black student transfers to all North Carolina four-year institutions have declined by 25, while the total number of transfer students has increased by 119.[63]

The number of black students receiving associate degrees from junior colleges increased from 209 in 1978–79 to 1,200 in 1984–85. However, the representation of blacks among all degree earners decreased from 14.31 percent in 1980 to 12.95 percent in 1985, even though the number (approximately 1,200) of black degree earners remained constant.[64] Obviously, black transfer students were not improving at the same rate as white students, even though the desegregation plan was designed to achieve some form of parity.

In North Carolina, the disparity betweeen course completion rates of white students and black students continues to be a problem. In 1984, 14 of the 58 community colleges in the State system had completion rates for whites that were twice as high as for blacks. This number was reduced to 10 in 1985, but only four of the 58 schools had higher completion rates for blacks than whites.[65]

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[58] "North Carolina *Adams* Status Report," Jesse L. High, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region IV, June 5, 1986, p. 3.
[59] Ibid., p. 4.
[60] Ibid.
[61] Ibid., p. 5.
[62] Ibid., p. 7.
[63] Ibid., p. 11.
[64] Ibid., p. 14.
[65] Ibid., pp. 14–15.

The State plan commits North Carolina to desegregating community college faculty, administrative, and governing employees. The State set a 10.5 percent goal for black professional employment. This goal was derived from the percentage of black graduates earning master's degrees from the University of North Carolina in 1982. In the "executive/administrative/managerial" category of professional employment, more than half the insitutions did not meet the 10.5 percent goal.[66]

In the faculty category, 34.5 percent of the system schools met or exceeded the goal, but most of the schools (65.5 percent) did not. Of the 58 schools, 67.2 percent did meet their professional "others" employment goals by the fall of 1985. In general, black representation in nonfaculty professional job categories increased 1.93 percent over the life of the plan. However, black representation on school faculties, the most important category, decreased slightly from 7.32 percent to 7.18 percent.[67] When faculty are included in the overall professional category, there is a negligible increase of .38 percent in the number of blacks employed in professional positions in the North Carolina community college system.[68]

OCR found that the State has not met its goals regarding governing boards. The regional status report states:

> Black representation on the 58 institutional boards of trustees has continuously increased over the life of the *Plan*. Notwithstanding, black representation fell short of the State's black population of 22 percent by seven percent. In 1984–85, black participation on local governing boards rose to its highest level at 15.34 percent but dropped by 0.54 percent by 1985–86.
>
> According to the 1980 Census, blacks constitute approximately 22 percent of North Carolina's population. In 1978, when the *Plan* was accepted, 8 percent of the governing board members were black. By the end of 1982–83, black participation on institutional governing boards had increased to 13.91 percent.[69]

g. Oklahoma

The State of Oklahoma committed to attain a five-year aggregate goal of parity for the enrollment of black students in undergraduate institutions. The stated aim of the plan was to "attain an average annual rate of black-to-white resident first-time freshmen enrollment equivalent to the average annual rate of black-to-white Oklahoma high school senior enrollment." [70] OCR found that the "State System did not attain parity in any year of the *Plan*, with the percentage-point difference ranging from 0.6 in fall 1978 to 2.0 in fall 1985 . . . the ratio of blacks to whites in the 12th grade has remained relatively stable, whereas the ratio of blacks to whites entering undergraduate study has widened from 1:11.1 in fall 1983,

[66] Ibid., p. 18.
[67] Ibid., pp. 18 and 23.
[68] Ibid., p. 24.
[69] Ibid., p. 31.
[70] "Oklahoma Comprehensive Status Report," Taylor D. August, Regional Director, Office for Civil Rights, U.S. Department of Education, Region VI, July 25, 1986, p. 6.

to 1:12.7 in fall 1985. Equivalent ratios were not attained in any year of the *Extended Revised State Plan.*"[71]

The State also committed to "completely eliminate the disparity between the proportion of black and white first-time entering freshmen and transfer students at its traditionally white four-year institutions by 1982–83. This includes the goal of reducing the disparity at individual institutions by at least 50 percent, with the aggregate reduction reflecting no disparity." [72]

The two comprehensive State universities, Oklahoma University and Oklahoma State University, have not met their goals, although they have shown substantial increases in the number of black students enrolled. The nine other State four-year schools showed declines in black enrollment and percentages during the life of the desegregation plan. Overall, black enrollment at State institutions has declined every year since 1979.[73]

OCR notes:

> The four-year schools enrolled a total of 1,127 black first-time students in fall 1985, the lowest number of any *Plan* year. State Regents point out that in fall 1985, the two-year colleges enrolled 44% of the State System black students, as compared to only 27% in 1973. Thus, it is difficult to obtain a significant absolute increase in the number of black students in the four-year schools. This movement to junior colleges is comparable for white students in Oklahoma, and for students as a whole nationally.[74]

Oklahoma committed to eliminating any proportional disparity between the percentages of black and white students entering graduate schools in the State. According to OCR:

> . . . black bachelor's degree graduates have consistently moved into graduate school at a rate which is essentially proportionate to that for white graduates, although in any given year, their movement might be slightly greater or slightly less than their white counterparts. The distribution of black students among fields of study, however, remains uneven. Projections are generally missed in the Engineering and Architecture, and Math and Physical Sciences categories.[75]

The State has failed in its commitment to achieve parity in the entrance rates of black and white students enrolling in professional schools. The State's performance in attaining this goal has been, according to OCR, "mediocre to poor." [76] Enrolling black professional and graduate students at parity with the State's black population would require a percentage of 6.7 percent. The actual percentage was less than half this figure, and in 1985, the State failed to meet its goals for any of the six categories of professional pro-

[71] Ibid., p. 7.
[72] Ibid., p. 8.
[73] Ibid., p. 10.
[74] Ibid., p. 9.
[75] Ibid., p. 26.
[76] Ibid., p. 36.

grams: Medicine, dentistry, osteopathy, law, veterinary medicine, and optometry.[77]

State goals for the retainment of black students were not met. OCR found the following:

> Goals for bachelor's degrees were not attained in any of the *Plan* years; master's degrees exceeded projections in three of the eight *Plan* years; and doctoral degrees exceeded goals only during the first two years of the *Plan*. However, the percentage of black bachelor's degree graduates from the TWIs increased from 69% in 1975–76 to 79% in 1984–85. Thus black undergraduate students have demonstrated some movement from the TBI to the TWIs during the Plan Years.
>
> Projections for degrees granted are predicated on the assumption that black and white students will move through the System at the same rate. However, the overall progression rates of black students in any given year at any level remains about 90% of the progression of the white student cohort. The cumulative effect of this inequality results in fewer black graduates than projected.[78]

The State did not meet participation goals for black academic faculty and staff at either the doctoral level or nondoctoral level in any year of the desegregation plan. In 1985–86, for example, the State system was 34 positions beneath its goal at the doctoral level and 54 jobs under its goal for less-than-doctoral positions. Black, full-time academic employees comprised 4.4 percent of the total annual hires in 1985–86, a percentage higher than in 1984–85, but lower than in each of the four preceding years.[79]

Oklahoma faired better in meeting its commitment to increase the number of blacks hired in nonacademic positions. According to OCR, the majority of the four-year colleges and professional schools met or exceeded their goals in 1985–86. The State as a whole exceeded its black participation goal in this area by 5 positions.[80]

Advances have been made in the State's initiative to increase black representation on governing boards. However, even though there were eight black governing board members and one black State Coordinating Board member, due to the composition of the boards, the black board members govern only 35 percent of the State's student enrollment.[81]

h. South Carolina

The South Carolina desegregation plan states:

> The State of South Carolina sets as a goal during the life of the *Plan* to increase annually the proportion of black high school graduates throughout the state who enter two-year and four-year undergraduate public higher education institutions in the state until the proportion of blacks at

[77] Ibid., p. 37.
[78] Ibid., p. 45.
[79] Ibid., p. 55.
[80] Ibid., p. 71.
[81] Ibid., p. 73.

least equals the proportion of whites who enter such institutions by the end of the Plan.[82]

The State did not meet this goal. At the end of the 1985–86 school year, when the plan expired, there was a disparity of 31.41 percent between blacks and whites entering institutions in the State system of higher education. This was an increase above the 28.13 percent disparity of the year before, albeit an improvement of the 39.66 percent disparity existing in 1981–82.[83]

The desegregation plan set a goal of a systemwide enrollment of 2,295 black high school graduates as first-time-first-year students at State schools by the end of the plan in 1985, a 150-percent increase over the number of black high school graduates entering the higher education system in 1979. The State did not meet the goal. In 1985, 1,206 black first-year students entered South Carolina schools, more than the 918 that enrolled in 1979, but far short of the goal. The number of black first-time-entering students, as a percentage of the State system school population, increased from 11.8 percent in 1981 to 15.1 percent in 1985.[84]

The first-time enrollment figures for black first-time entrants declined over the life of the plan for two-year colleges, from 26.7 percent in 1981–82 to 24.1 percent in 1985–86.[85]

The State did not meet its overall black student enrollment goals, but showed improvement over the life of the plan. The OCR Regional Status Report for the State found:

> Throughout the life of the *Plan*, actual black undergraduate enrollment has increased from 5,152 or 10% in 1981 to 5,645 or 11.1 percent in 1985. Projected goals for this time period were 10.6% in 1981 and 13.0% in 1985. In 1981, five institutions met or exceeded their individual goals. Nine of the eleven institutions increased the percentage of black undergraduate enrollment from 1981 to 1985.[86]

The State was unsuccessful in its attempt to increase the number of blacks with undergraduate degrees pursuing graduate or professional studies. In academic year 1981–82, 8.29 percent of black undergraduate degree holders went into graduate study. That number increased to 11.32 percent by 1984–85, but plummeted to 7.95 by 1985–86. The percentage of blacks pursuing professional degrees fluctuated between 2.17 percent in 1981 and 2.98 percent by 1985.[87]

The State also failed in its commitment to reduce retention rate disparities between black and white students. According to OCR, seven of the 12-State four-year schools had significantly higher retention rates for white students than black students. Although the seven schools were required to provide explanations for the retention rate disparities, OCR accepted insufficient explanations. For example, The Citadel reported that students did not like military

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[82] "South Carolina *Adams* Status Report," Jesse L. High, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region IV, June 5, 1986, p. 27.
[83] Ibid., pp. 27–28.
[84] Ibid., p. 32.
[85] Ibid., p. 35.
[86] Ibid., p. 38.
[87] Ibid., p. 39.

life. The Medical University of South Carolina and the University of South Carolina at Columbia simply said students left school for personal reasons. Possible Title VI violations, which led to the requirement of a desegregation plan in the first place, were not explored.[88]

Desegregation goals for black executives, administrators, and managers at TWI's were unmet by large percentages. The goal was to have blacks holding 12.03 percent of such positions in State schools by 1985. In 1985, blacks held 5 percent of the positions, less than half the goal, and less than the 6.45 percent figure in 1981.[89]

The State did not do much better with respect to its commitment of increasing black faculty at TWI's not requiring a doctoral degree. The percentage goal for 1985 was 12.03 percent, but the actual number was 4.8 percent, a small increase over the 3.4 percent in 1981.[90]

The goal for black executives, administrators, and, managers at TWI's requiring a doctoral degree was 6.96 percent for 1985. The actual percentage was 1.41 percent. There are only four blacks holding such positions in the entire State system of four-year TWI's.[91]

The goal for black faculty at TWI's requiring a doctoral degree for 1985 was 3.38 percent. The actual figure was 1.37 percent, a decrease from 1981's percentage of 1.52 percent.[92]

i. Virginia

The main purpose of Virginia's desegregation plan was to reduce the disparity between blacks and whites entering the State System of Higher Education by eliminating the vestiges of the illegal, previously dual systems. Virginia's record in accomplishing this goal is an abysmal failure. The OCR status report found the following, with respect to Virginia's performance:

> The Commonwealth committed that, for two-year and four-year institutions, the proportion of black high school graduates throughout the State who enter such institutions shall be at least equal to the proportion of white high school graduates who enter such institutions. In academic year 1978–79, there was an 8.67 percent difference between the proportion of black and white high school graduates who entered Virginia's two-year and four-year state-sponsored institutions. By academic year 1985–86, the difference increased to 20.7 percentage points. The rate at which black students are entering Virginia's system of higher education in 1985 was 30.61 percent lower than the rate in 1978 when it was 31.41 percent. The rate at which white students entered Virginia's system in 1985 was 51.21 percent; in 1978 it was 40.08 percent. While the number of white high school graduates has declined significantly since 1978, the number of black high school graduates has

[88] Ibid., p. 43.
[89] Ibid., p. 47.
[90] Ibid., p. 49.
[91] Ibid., p. 53.
[92] Ibid., p. 55.

> remained relatively stable. However, while the number of blacks entering the system has declined, from 1978 compared to 1985, the number of whites entering has increased substantially.[93]

The figures for black first-time enrollments have decreased since the plan was implemented. By the last year of the plan, such enrollments for community colleges were lower than any year since 1981. The enrollment figure in 1978 for four-year schools was 2,522. It dropped to 2,282 in 1985, the lowest number of any year of the desegregation plan.[94]

Virginia attempted to institute a transfer program for junior-college graduates to help reduce the racial disparity among its students. OCR found that this program, too, was a failure.

> OCR learned that very few blacks are enrolled in the college transfer curriculum at the two-year institutions. For example, only 69 black students (6.7 percent) received associate degrees in liberal or general studies in the two-year system during 1984–85. As indicated in Section II.F. of this report, there is great variation in the transfer policies of the four-year institutions. However, the liberal and general studies programs are completely transferable to a majority of the senior institutions. The problem of low numbers of blacks in the college transfer programs was highlighted in OCR's July 5, 1985 evaluation letter. The Commonwealth responded that "the Virginia Community College System has not viewed the encouragement of black students to college transfer courses as an appropriate role for the System." (August 26, 1985 letter, Attachment 8, p. 11.) This view is inconsistent with the overall goal of decreasing the disparity in the college going rate of black students.[95]

The State agreed to eliminate at least one-half of the 1978 disparity in the rate at which black and white students entered four-year TWI's. This goal was not accomplished. In 1978, the entrance rate for black students was 7.65 percent, compared to 29.03 percent for white students, a difference of 21.38 percent. The disparity in the entering rates increased to 23.23 percent in 1985–86.[96]

The State plan also established the goal of annually increasing the total proportion of black students attending the TWI's. The percentage has increased, from 6.02 percent in 1978 to 7.5 percent in 1985.[97]

The plan also commits Virginia to increasing the number and percentages of blacks entering graduate and professional schools. However, according to OCR:

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[93] "Status Report of the Office for Civil Rights Concerning the Implementation of the Virginia Plan for Equal Opportunity in State-Supported Institutions of Higher Education," Jeanette J. Lim, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region III, p. 85.
[94] Ibid., p. 86.
[95] Ibid., p. 91.
[96] Ibid., pp. 112-113.
[97] Ibid., p. 114.

> There are very few black Virginians enrolled in medicine, business and engineering . . . black graduate enrollment has declined significantly since 1978–79 (8.24%) to 404 black first-time graduate students in 1985–86 (6.77%). With regard to first professional enrollment, the number of blacks has decreased in medicine and dentistry, but increased significantly in law, particularly at the College of William and Mary.[98]

Virginia has done poorly in its commitment to increase the number of black employees at State schools. The number of black faculty at two-year schools has remained the same, at 128 or 6.4 percent of all faculty, from 1983–84 to 1985–86. There was a negligible increase at the four-year schools from 150 (2.1 percent) in 1983–84 to 175 (2.4 percent) in 1985–86.[99] In the administrative and managerial areas, the percentage of blacks in positions requiring doctoral degrees increased from 4.3 in 1978 to 7 in 1985, and the percentage of blacks holding masters degrees increased from 5.5 percent in 1978–79 to 10.8 percent in 1985.[100]

Despite a commitment to increase black representation on governing boards, such representation has remained relatively constant since 1978, when 33 blacks accounted for 14.35 percent of board members. In 1985, 37 blacks represented 16.59 percent of all board members.[101]

j. West Virginia

The West Virginia desegregation plan affects only one institution, the University of West Virginia. In regard to the success of West Virginia's desegregation plan, OCR found:

> . . . the number of black undergraduates rose in 1981–82 and 1982–83. However, during the following two years black enrollment dropped. In 1984–85 there were less blacks enrolled than in 1981–82, the first year of *Plan* implementation. Black undergraduate enrollment rose by 24 students in 1985–86, however, it is still below that of the 1982–83 year when black enrollment was at its peak.
>
> At the conclusion of the five-year desegregation *Plan*, WVU projected that 709 black undergraduate students would be enrolled, an increase of 419. However, after five years, WVU has increased its undergraduate black enrollment by only 80 students (290 in 1980–81 to 370 in 1985–86) or 19 percent of its projected increase of 419. Since the *Plan's* inception, the percentage of blacks enrolled has increased by 0.6 percentage points; from 2.2 in 1980 to 2.8 in 1985. At the conclusion of the five year *Plan* WVU has met 52.2 percent of its projected undergraduate enrollment.
>
> WVU projected that its total undergraduate enrollment would remain constant through the life of the *Plan*. The

[98] Ibid., p. 125.
[99] Ibid., p. 151.
[100] Ibid., p. 152.
[101] Ibid., p. 159.

total undergraduate enrollment, however, declined by 247 students, from 13,397 in 1980 to 13,150 in 1985.[102]

The State also failed in its plan to increase graduate school enrollment for black students. Although WVU enrolled 91 black graduate students in the 1981–82 year (an increase of 18 from the previous year), the 1982–83 black graduate enrollment declined by almost 50 percent. Between then and the 1985–86 academic year, black graduate enrollment remained well below the goals. WVU projected it would enroll 200 black graduate students by the end of the plan, but fell short of the goal by 132 students. Only 34 percent of its projected enrollment was met. In fact, in 1985–86, WVU enrolled five less black graduate students than were enrolled in 1980, the year prior to the *Plan*.[103]

West Virginia also committed to increasing black student enrollment in professional schools. The medical school enrolled two black students in 1981–82 and 1982–83. The enrollment declined to one student during the next two years, but increased to three, of a total 341 medical students, in 1985–86. This met the State goal.[104]

The dentistry school did not meet its goal, but the law school did. In each case, the number of blacks represented a very small proportion of the total school enrollment. In 1985–86, dentistry had two black students in a total group of 169 students, and law had 13 black students of a total group of 319.[105]

WVU had some success in its effort to increase retention rates for black students. The OCR status report notes:

> In the fall of 1985, WVU studied the number of undergraduate students enrolled in fall 1984 who returned the following year. Of the total 1984 undergraduate enrollment, approximately 86 percent returned the following fall. Of the black students, approximately 79 percent returned. Of the total freshmen class, 78 percent returned while 73 percent of the black freshmen returned.
>
> WVU also studied the number of fall 1984 first time students who returned in 1985. Of the total first-time students, approximately 79 percent returned in fall 1985. Of the first time black students approximately 73 percent returned. Of the first time freshmen, 79 percent returned. Of those who were black, 73 percent returned.
>
> Since the *Plan* began, black students at WVU have earned low [Grade Point Averages] during the freshman year. In OCR's April 23, 1985 status report it was stated that for three consecutive years more than 50 percent of the black first time freshmen received GPAs below 2.0. At the conclusion of the 1983–84 academic year 60 percent of the black freshmen earned GPAs below a 2.0. This percentage decreased to 55 percent at the end of the 1984–85 academic year. At the conclusion of the fall 1985 semester, 26

[102] "Final Status Report on the University of West Virginia's Compliance Plan for Equal Opportunity," Jeanette J. Lim, Acting Director, Office for Civil Rights, U.S. Department of Education, Region III, p. 11.
[103] Ibid., p. 19.
[104] Ibid., p. 22.
[105] Ibid., pp. 24 and 27.

percent of black first-time freshmen received unsatisfactory GPAs. Figures for the 1985–86 academic year are not yet available.[106]

WVU committed to increasing its number of black faculty by 29 over the life of the desegregation plan. The commitment was not met. The number of black faculty increased by one, from 16 to 17, from 1980 to 1985. This compares to the total number of faculty at WVU in 1985, which was 1,311.[107]

In 1985, WVU had 15 blacks in administrative positions, representing 2.7 percent of all school administrators. This exceeded the desegregation plan's goal by three.[108] Blacks represent 2.7 percent of the school's professional staff, filling 23 positions, three short of the plan's goal.[109]

2. OCR Task Force Evaluations

OCR appointed a special task force to review the regional status reports and the overall issue of higher education desegregation in the States whose plans expired. The internal notes of the task force obtained by the subcommittee describe failures of the States to eliminate the vestiges of illegal segregation.[110] For example, in reference to Arkansas, the notes state, "Arkansas has failed to achieve most of its numerical goals.[111] The notes indicate that major problem areas led to the failure of the State desegregation plan:

1. All projects for construction or renovation of facilities at TBI have been funded or completed, but the TBI continues to have a higher proportion of its facilities rated below average than all but one of the TWIs.
2. Most TWIs implemented undergraduate recruitment measures, but the efforts did not result in increased black enrollment.
3. Most TWIs implemented most measures to increase black retention rates, but no institutions have significantly decreased retention rate disparities between black and white students.
4. All TWIs implemented all graduate recruitment measures, but enrollment goals have not been met.
5. Most TWIs implemented employment measures, but although non-academic employment projections have been met, academic employment remains below projected levels.[112]

The notes on Georgia stated that the State's efforts to review and enhance black student recruitment policies had "many inadequacies."[113] In most institutions, only some of the promised measures

[106] Ibid., pp. 44–45.
[107] Ibid., p. 54.
[108] Ibid., p. 56.
[109] Ibid., p. 58.
[110] The notes are based on 1985 OCR evaluations and the 1986 regional status report.
[111] "Arkansas," Notes, Task Force on Higher Education Desegregation, Office for Civil Rights, U.S. Department of Education, undated.
[112] Ibid.
[113] "Georgia," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

were implemented. Submissions to OCR in 1985 from Georgia show fewer recruitment activities were planned. The notes also indicate that Georgia did not implement all measures to desegregate faculty, administrative staff, and governing boards.[114]

The task force also expressed concerns about Missouri, where:

> Despite reported activities, UMC [University of Missouri-Columbia] now enrolls fewer black undergraduates and first-time freshmen than it enrolled in the year prior to Plan implementation; lack of progress may be attributable in part to UMC's "reputation for insensitivity to the needs of black students," negative feedback from present and former students, and high school guidance counselors' lack of information concerning the availability of support services at UMC.[115]

In regard to North Carolina, the task force expressed concerns that black enrollment in the community college system had declined during the life of the desegregation plan, that there is no change in the enrollment patterns of black and white students transferring from two- to four-year colleges, black participation on the 58 institutional governing boards of community colleges remains lower than the State's black population, and black representation in professional employment categories has not reached the percentage of black graduates with qualifying degrees.[116]

The task force noted that Oklahoma had been criticized in the past for a "lack of vigorous and complete *Plan* implementation."[117] Efforts to recruit black students were disorganized, and in some cases recruitment organizers for graduate and professional programs were unaware that was their responsibility.[118]

South Carolina did not allocate all desegregation funds promised in its plan. Black student enrollment goals in the State were not met, and the State has not indicated what measures were implemented to attract minority students.[119]

In Virginia, the higher education task force noted serious problems in attempting to correct deficiencies at TBI's. The notes state:

> The Commonwealth had failed to submit annual reports on resource comparability for two years. [Virginia State University] was experiencing resource problems in traditional basic academic programs, particularly in the basic sciences. Also, problems in the teacher education programs at [Norfolk State University] and VSU were identified. VSU library collections were deficient in all program areas other than teacher education, yet total library budget for 1984-1985 was not comparable to that of comparable TWIs. NSU and VSU had fewer earned doctorates on

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[114] Ibid.
[115] "Missouri," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.
[116] "North Carolina," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.
[117] "Oklahoma," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.
[118] Ibid.
[119] "South Carolina," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

> their faculties than comparable TWIs. Funds for eliminating historical deficiencies were appropriated, subject to an expenditure plan receiving written approval of the Governor, but neither NSU or VSU had received approval to use the fund.[120]

The task force also stated that black student recruitment efforts at two-year schools had failed. A recruitment tour of community colleges by four-year institutions did not reach most of the State's black students. Moreover, the increase in the percentage of black students receiving financial aid between 1978 and 1983 was much lower than the increase for white students.[121]

The task force expressed concerns that West Virginia had not provided any retention data for black students, even though other information indicated that high percentages of black students had low grade point averages.[122]

3. The Factual Summaries

OCR sent factual summaries of desegregation activities to each of the 10 States. OCR solicited comments from the States and the public, which it plans to publish in the Federal Register prior to a final determination of the status of desegregation in the States. The reports contain no findings. Instead, the summaries are recitations emphasizing the measures implemented by the States, but downplaying the measures that were not implemented and the fact that nearly all the goals set by the 10 States were not met.

A case in point is the summary sent to the State of Virginia. Based on the internal site visit reports and regional status reports, the committee believes Virginia was egregious in its failure to eliminate the vestiges of the *de jure* segregated systems of higher education. The disparity between white and black students increased more than in the other nine States. Yet in an 88-page report, OCR devotes a total of four lines to this fact. There is no analysis of the problem, nor is there much mention of Virginia's failure to implement measures designed to desegregate the State system.

The summary report ignored many of the major findings of the Region III status report on Virginia, from which the information in the summary report was supposedly culled. For example, the status report stated that Virginia established a plan to counsel black high school students on course selection and other methods of preparation to enter college. This plan was created after a State study found that black high school students were ill-prepared for college. The plan initiated the "Better Information Project" for black students. The status report noted:

> The OCR evaluation letter dated July 5, 1985 requested that the Commonwealth provide an evaluation of the Better Information Project. However, the Commonwealth's

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[120] "Summary of Problems, Virginia Statewide Commitments, Status Per July 1985 Evaluation Letter," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

[121] Ibid.

[122] "West Virginia," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

response did not provide an evaluation of the effectiveness of this program in increasing the number of black students in the academic track, the problem identified in 1980 which led to the creation of the program. The Commonwealth indicated that ". . . based on the very positive responses of workshop participants and the public school counselors, the council staff judges the Better Information Project to be an excellent means of providing information about academic program planning to young black students." Although the Commonwealth judged the program to be successful, it did not propose to substantially increase funding for this project.[123]

Also, the OCR status report found:

> There was considerable confusion at the majority of two-year institutions over the commitment in the *Amended Plan* to develop a recruitment brochure aimed at black students. The Community College system understood that the State would develop the brochure for each college. However, in a November, 1984 memorandum, the coordinator of Affirmative Action of the State Council notified each institution that it should develop an institution specific brochure. At the time of OCR on-site visits, in Spring 1986, the majority of community colleges had not developed a recruitment brochure aimed at black students.[124]

This information was omitted from the summary report transmitted to the State.

The committee found that the summary report stressed positive efforts of the States and deemphasized many negative factors involved in higher education desegregation. The factual summaries contained a bias toward finding the States free of Title VI violations, despite the fact that racial identifiability, the major factor which led to findings of discrimination in 1969, still exists in the 10 States.

Substantial evidence also exists that this bias will lead OCR to ignore Title VI violations in the 10 States by hinging its final decision on the implementation of measures, and ignoring statistical factors in evaluating the success of the desegregation plans. In 1985, Harry M. Singleton, then the Assistant Secretary for Civil Rights, informed OCR staff that new guidance would be used in desegregation plan evaluations:

> In the past, the enrollment and employment sections of our evaluation letters and status reports have been focused primarily around the achievement of plan objectives and have de-emphasized the implementation of measures. When objectives were not achieved, new measures were requested, sometimes without an assessment of the reasonableness of previous implementation or consideration of whether additional measures are feasible and likely to produce better results. Although I have continually

[123] Op. Cit., "Virginia," p. 76.
[124] Ibid., p. 79.

stressed the need to shift the focus of our analysis to measures, additional work is needed.[125]

When asked if Singleton's memorandum was still OCR's policy, Alicia Coro, the Acting Assistant Secretary for Civil Rights, testified: "Whatever policy stated there is still in effect. I have not changed that policy."[126]

The committee believes this policy will have disastrous consequences for minority students in States with expiring desegregation plans. The OCR status reports and site visit reports contain evidence that the desegregation plans not only did not eliminate the vestiges of illegal segregation, in some cases, the situation has worsened for black students. If measures alone are used to justify the discontinuance of desegregation efforts, then the progress made in some States will be stopped, and reversed. And in States that are already backsliding, the descent to inequities of the past will continue.

The committee finds that OCR's policy is in flagrant disregard of congressional intent. Congress passed a Civil Rights Act that prohibits discrimination on the basis of race. The Federal Government, nearly two decades ago, found that the vestiges of such discrimination still existed in the higher education systems of several States. The Federal courts have ordered that the vestiges be eliminated. No law or court decision provides OCR the authority to ignore discrimination.

Even if OCR decides to make its conclusive Title VI finding based solely on the implementation of measures, there is still sufficient evidence that the States have not implemented their desegregation plans in good faith. In Virginia, for example, each school was supposed to provide financial aid on a proportionally equal basis. Yet the number of white students receiving financial aid increased by 71.6 percent from 1978 to 1984, while the number of black students receiving such assistance increased by only 16.4 percent.[127]

Virginia State University did not expend all funds appropriated over the life of the plan by the State legislature for program enhancement. At the time of the OCR onsite review in April 1986, only 65 percent of the funds had been committed or expended.[128]

Most community colleges in Virginia had not developed recruitment brochures aimed at black students, as required by the plan.[129]

Virginia Commonwealth University did not fulfill several commitments, including increasing graduate teaching and research assistantships available to black students, conducting research on black graduate enrollment patterns, consulting with individual departments with low black student enrollments, and working with students to identify the special needs of blacks.[130]

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[125] Memorandum to Regions, 3, 4, 6, and 7, Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, February 11, 1985.
[126] Hearing, p. 335.
[127] Op. Cit., "Virginia," p. 83.
[128] Ibid., p. 38.
[129] Ibid., p. 79.
[130] Ibid., p. 22.

The plan also requires the State to analyze progress and describe steps to be taken to achieve success and maintain schedules set forth in the desegregation plan. Annual reports submitted to OCR in 1984 and 1985 did not include evaluations of program effectiveness and have not proposed additional measures to achieve objectives of the plan.

The OCR onsite report for the university discovered more problems. An internal school committee found that black recruitment efforts were hampered by the failure of the school to make financial resources available and the lack of a clear recruitment structure accountable for its actions. School officials admitted to OCR that they had not monitored compliance with the desegregation plan, and the school affirmative action coordinator told OCR staff he was not involved in recruitment efforts, even though it was required by the plan. Faculty, administrators, and students told OCR that the school's efforts to coordinate black student retention and provide personal counseling for black students were ineffective.[131]

The onsite visit to Virginia Commonwealth University also found numerous deficiencies in implementing measures contained in the plan. The school did not conduct student recruitment and retention research, and did not use faculty and alumni in student recruitment efforts. In addition, the university did not provide financial aid workshops for parents and students, did not send letters to parents of high school students, and did not initiate a retention study until a formal complaint was lodged with OCR.[132]

At Virginia's Christopher Newport College, an onsite report found, "The overall impression of Christopher Newport College is that they did not achieve substantial compliance with their desegregation plan and the College pays lip service only to integration."[133]

The onsite reports found similar problems at most of the schools it visited: Disparity between black and white student populations, retention disparities, failure to adhere to all plan commitments, recruitment measures not implemented, and goals unmet. In two schools, Vance-Granville Community College of North Carolina and Florida's Edison Community College, recruitment of black students is purposely not done, even though it is required by the respective State desegregation plan.[134]

Based on the information reviewed by the subcommittee, the committee concludes that the vestiges of *de jure* segregation have not been removed from the 10 States. Further enforcement actions by OCR are clearly required. The committee believes the OCR internal reports describe a situation perhaps best summarized by Julius Chambers, Director and General Counsel of the NAACP Legal Defense Fund, who testified before the subcommittee.

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[131] On-Site Report, University of Virginia, Office for Civil Rights, U.S. Department of Education, pp. 7 and 8.

[132] On-Site Report, Virginia Commonwealth University, Office for Civil Rights, U.S. Department of Education, pp. 1–5 and 7.

[133] On-Site Report, Christopher Newport College, Office for Civil Rights, U.S. Department of Education, p. 5.

[134] On-Site Reports, Vance-Granville Community College, North Carolina, and Edison Community College, Florida, Office for Civil Rights, U.S. Department of Education.

> Our preliminary analysis shows that while there has been some significant progress and success stories, the *Adams* States are not yet in compliance with the plans to which they committed themselves almost a decade ago. Typically, in the *Adams* States, black students enroll in college in significantly fewer numbers and percentages than their white counterparts. Their representation is significantly lower than their percentage of the general population. Even for those pursuing undergraduate studies, a larger percentage of black students are enrolled in 2-year as opposed to 4-year institutions. They drop out in higher numbers compared to white students. Of those black students who graduate, an even smaller proportion enroll in graduate and professional schools.
>
> Public colleges and universities, which formerly excluded black students by law, remain virtually all-white. Often a significant percentage of the black students enrolled are on athletic scholarships and many of these students do not graduate. Black faculty and administrators at most of the traditionally white institutions are virtually nonexistent. Black individuals seeking employment in state institutions of higher education must find their opportunities in traditionally black institutions. Institutions which were established by the state for blacks remain predominantly black and underfunded, with inferior academic programs and facilities—in other words, separate and unequal.
>
> We can no more deny that these conditions are the unameliorated effects of discriminatory state action than we can continue to allow the conditions to remain unremedied.[135]

The desegregation plans, as ineffective as they have been, are the only form of statewide remedy currently available to black students. Yet, the OCR higher education task force determined that none of the 10 States whose plans have expired will continue, at minimum, the commitments established in the desegregation plans.[136] If OCR takes no action against the 10 States, the minority students in the States will have less remedial efforts working in their behalf than were contained in the desegregation plans which, in the opinion of this committee, were failures.

The failure of plans, regardless of the best intentions, is not cause to abandon the effort to remove the vestiges of *de jure* segregation in the States. The *Adams* court has ruled that new plans, or amended plans, are required when desegregation is unsuccessful. The court ordered OCR in 1977 to notify certain States that the plans failed to meet "'important desegregation requirements and . . . failed to achieve significant progress toward higher education desegregation'" [and] "'are not adequate to comply with Title VI of the 1964 Civil Rights Act.'"[137]

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[135] Hearing, pp. 14-15.
[136] Notes on Continuation of Desegregation Efforts, Task Force on Higher Education Desegregation, Office for Civil Rights, U.S. Department of Education, undated.
[137] Hearing, p. 25.

Having established criteria for adequate desegregation plans, OCR then accepted five-year plans from the States in 1978. When those plans expired, the court ruled that "each state has not achieved the principal objectives in its plan because of the state's failure to implement concrete and specific measures adequate to ensure that the promised desegregation goals would be achieved by the end of the five-year desegregation period." [138] The plans ordered pursuant to the *Adams* finding in 1983 resulted in the amended plans which expired at the end of the 1985–86 school year.

Given this history, the committee finds that OCR is abrogating its responsibility to enforce civil rights laws, as it has continually done in the past. In the case of higher education desegregation, judicial enforcement of the law has become the norm where OCR is concerned. This is not how it should be, and is not the intent of Congress.

OCR's refusal to act in the face of strong evidence that the vestiges of *de jure* segregation continue in the 10 States is a curious contrast to recent actions by the Department of Justice in a higher education desegregation case involving the State of Louisiana. The State administers a desegregation plan required by a consent decree resulting from a civil suit brought by the Federal Government. On March 3, 1987, the Department sent a letter to the State which raised "certain concerns about the defendants' compliance with. . .the Consent Decree." [139]

For example, the State is required to increase minority race representation on higher education governing and management boards. According to DOJ, this has not been accomplished.

> . . .there has been a strong, continuing tendency to appoint or reappoint white persons to traditionally white boards and black persons to the traditionally black boards. Moreover, other-race appointments to these boards have generally been made only where the person being replaced was of the other race . . . In our judgment, the State has not made adequate efforts to carry out its commitments under the Consent Decree with respect to the Board of Regents and, especially, the LSU Board of Supervisors.[140]

DOJ also found that Louisiana had not fulfilled its commitment to eliminate the disparity in rates at which black and white high school graduates enter public higher education institutions. The disparity rate for academic year 1983–84 was 19.8 percent and the rate for 1984–85 was 16.6 percent. "This represents a dramatic increase since entry of the Consent Decree, when the disparity was approximately 6 percentage points. As the 1984 annual report suggests, this is cause for serious concern." [141]

The State also is required to eliminate disparities among the rates that black and white four-year graduates enter graduate and

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[138] Ibid., p. 26.
[139] Letter to Counsel of Record for State of Louisiana, Re: *United States* v. *State of Louisiana, et al., Civil Action No. 80-3300-A (E.D. La.)*, from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, March 3, 1987, p. 1.
[140] Ibid., p. 3.
[141] Ibid., p. 4.

professional schools. While DOJ notes some improvement in this area, it found that disparities still existed in certain graduate and professional programs and also remain at certain schools. DOJ said it considers "all these patterns cause for further inquiry. Specifically, we would like to know the reasons why the patterns exist and, in particular, the effect that State-erected barriers and/or inaction have had on the patterns observed." [142]

DOJ concluded that six State TWIs regressed in their recruitment of minority students over the course of the Consent Decree period, and two others showed negligible progress. The statistics on these schools, according to DOJ, "reflect serious problems." [143] The Department asked the State to improve its recruitment and retention efforts.

The State continued dual standards in its efforts to promote TWIs and TBIs, a condition the Consent Decree attempts to correct. Recruitment brochures required by the Consent Decree and brochures for pet projects of the State differed in favor of programs used primarily by white students. DOJ noted this difference as a serious problem.

> We could not help noticing the contrast between the brochures distributed pursuant to the Consent Decree in 1982–83 and 1983–84 and brochures being disseminated during the same years by the Board of Regents to publicize recently established standards for "Regents Scholar" certificates. The latter are professionally done, typeset, and printed in color on textured bond paper at a cost of 28 cents per copy. The Consent-Decree brochures were typewritten, crudely illustrated, and printed on plain paper at a cost of .067 cents for undergraduate brochures and 2.5 cents per copy for graduate brochures. We think that parents who received both brochures could easily conclude that the Board of Regents did not place a high priority on matters discussed in the Consent-Decree brochures. The problems noted above seem particularly significant in view of the difficulties that many institutions are having in increasing other-race enrollment.[144]

The DOJ letter goes on to criticize the State for failing to improve attrition rates for minority students at schools where such rates are worsening, serious failures in efforts to recruit minority students to four-year institutions, and an overall failure to eliminate the notion of segregated schools, an idea which exists as a remnant of the previously illegal, dual systems of education. DOJ notes this as a major problem.

> We consider these problems to be of serious concern if progress is to be made in reducing the remaining vestiges of racial segregation in Louisiana's public system of higher education. We think there remains a strong tendency for students graduating from public or private high schools, community colleges and other institutions in Louisiana to

[142] Ibid., p. 6.
[143] Ibid., p. 10.
[144] Ibid., p. 15.

select a college or university at least in part on the basis of its past reputation as an institution for blacks or for whites. Information about educational opportunities available is necessary if these stereotypes are to be broken down.[145]

B. DOED HAS NOT ADEQUATELY INVESTIGATED A NATIONWIDE SCHEME TO BACKDATE CIVIL RIGHTS DOCUMENTS, IMPROPERLY CLOSE DISCRIMINATION INVESTIGATIONS, AND PROVIDE FALSE INFORMATION TO A FEDERAL COURT

In September 1986, the Justice Department filed a report with the *Adams* court, informing the court that:

> In July, it came to the attention of the Secretary of Education that some employees of the Department's Region I office (Office for Civil Rights) (OCR) in Boston might have engaged in the practice of backdating documents or failing to follow internal procedures required to track processing of complaints, which must be handled within certain timeframes under this court's orders of March 11, 1983 and January 17, 1985 in these consolidated cases. The Department of Education has promptly and vigorously taken action to investigate, prevent, and, if appropriate, punish those involved in any such practices.[146]

The report, and a subsequent report to the court, described the backdating as a problem affecting a small group of cases, and promised disciplinary action against the employees who participated in the backdating.

In reference to the backdating problem, Alicia Coro, then the Acting Assistant Secretary for Civil Rights, testified before the subcommittee that, "I discovered this problem during a visit to the Boston regional office on Tuesday, July 15, 1986. At that time, I was given reports of unethical and unprofessional activities with regard to efforts to meet the *Adams* timeframes."[147]

Coro also testified:

> Now at the outset, I immediately reported the matter to the Secretary and to the general counsel. At the order of the Secretary, the files in Boston were secured. Within 3 days, I sent a team of OCR senior staff to Boston to investigate fully the situation in that regional office. I believe it is significant that this OCR investigation commenced immediately and it was at my initiation.[148]

The committee finds the investigation conducted by DOED in this matter to be incomplete. Therefore, the Justice Department's contention that a small number of cases and OCR employees were involved in the backdating may have been misleading.

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[145] Ibid., p. 28.
[146] "Report to the Court: In The United States District Court for The District of Columbia, *Kenneth Adams, et al., Plaintiffs,* v. *William Bennett, Secretary of Education, et al., Defendants,* Civil Action No. 3095-70, *Women's Equity Action League, et al., Plaintiffs,* v. *William Bennett, Secretary of Education, et al., Defendants,* Civil Action No. 74-1720, September 1986.
[147] Hearing, p. 263.
[148] Ibid.

The Acting Assistant Secretary's claim that she uncovered the backdating problem and then initiated the investigation is untrue. The subcommittee's review found evidence that she did not discover the backdating problem and, in fact, she initially attempted to prevent the DOED Inspector General (IG) from collecting information pertinent to the backdating investigation.

The subcommittee's inquiry revealed that the backdating investigation was initially discovered by the IG, not Ms. Coro. The IG was alerted to the backdating by an anonymous call to a special hotline number established for Federal employees who wish to expose wrongdoing but remain anonymous. The call was made on June 17, 1986, nearly a month before Ms. Coro claimed she discovered the problem. The caller was later identified as Rance O'Quinn, an Equal Opportunity Specialist in the OCR Region I office. Mr. O'Quinn testified before the subcommittee and willingly admitted he made the original hotline complaint.[149]

The call was described in an investigative report prepared by the IG:

> On June 17, 1986 a complaint was received by the OIG Hotline alleging that Letters of Finding (LOFS) were being backdated to reflect compliance with court ordered timeframes. During an interview conducted on July 14, 1986 Loa Bliss, then Acting Regional Director, Office for Civil Rights (OCR), Boston, advised that in the past LOFS may have been backdated. On July 16, 1986 Bliss furnished a memorandum to Alicia Coro, Acting Assistant Secretary, OCR, describing unethical or unprofessional activities in OCR, Region I including her assessment of the backdating situation.[150]

On July 14, 1986, one day before the Acting Assistant Secretary claimed she discovered the problem, the IG's office asked Ms. Bliss to furnish "specific information and Department documents relative to the investigation." [151] Ms. Coro denied the request. The IG investigative report on this matter stated, "On July 16, 1986, Alicia Coro, Acting Assistant Secretary, OCR, stated OCR would not provide certain requested documents unless she was instructed to do so by the Office of General Counsel." [152]

In her testimony before the subcommittee, Ms. Coro stated:

> That was an incident that lasted for about 15 minutes. I, of course, was very upset about what I had discovered the day before, and I didn't know that this was going on. I am a human being and was naturally upset. I was upset because of the way in which the inspector general's office asked for information. It was a lower-level staff person, who was informed that I would have to consult with the general counsel. When I spoke with the general counsel, he said yes, just go ahead. I spoke with the inspector gen-

[149] Hearing, p. 342.
[150] "Report of Investigation Concerning Unknown Subject(s), Office for Civil Rights (OCR), Region I, Boston, MA," Office of the Inspector General, U.S. Department of Education, November 12, 1986, p. 1.
[151] Ibid.
[152] Ibid.

> eral to discuss the matter. The issue was resolved to the extent that that very same evening we were making plans, the inspector general and myself, on the logistics of the inspector general in taking over the files. That is an incident that unfortunately the inspector general chose to put in that report.[153]

DOED records show that the records were not released to the IG until four days after the original request for the material. DOED Secretary William J. Bennett did not authorize the IG to receive the files until July 18, 1986, four days after the IG's original request.[154]

The OCR Central Office staff may have been aware of the backdating prior to the start of the IG investigation. Mr. O'Quinn testified that he notified the Director of Operations of OCR in early June 1986, prior to making the Hotline complaint, that backdating was occurring in Region I.[155] However, Ms. Coro testified that the Director had not informed her about the conversation with Mr. O'Quinn regarding the backdating.[156]

Ms. Bliss, the former Acting Regional Director for Region I, told IG investigators that she understood that Central Office staff were aware of and condoned the backdating problem.[157] Richard McCann, the former Regional Director in Region I, also told IG investigators that Central Office was aware of the backdating. According to the IG report:

> [McCann] stated that he did not receive OCR Headquarters approval for this backdating but that discussion of the activity was held with Headquarters personnel and no objections were raised. He was unable to recall the identities of the Headquarters employees with whom he discussed the backdating.[158]

Neither the IG nor OCR investigated central staff knowledge of or participation in the backdating. Ms. Coro testified she asked senior staff only if they were aware of the backdating.[159]

The committee finds that several important investigative steps were omitted regarding Central Office staff. The IG and OCR did not contact all employees in Region I to determine who they spoke to in Central Office about the backdating. At least three employees, Mr. McCann, Ms. Bliss, and Mr. O'Quinn, informed the IG they had knowledge of Central Office complicity in the affair. This omission is glaring in light of the fact that backdating was later discovered in OCR regional offices nationwide, indicating that it was not an isolated occurrence in Region I, but a systematic problem that may have emanated from Central Office as an unwritten policy.

Following the disclosure of backdating in Region I, OCR conducted a review of its 10 regional offices to determine if additional

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[153] Hearing, p. 278.
[154] "Memorandum to the Inspector General," William J. Bennett, Secretary of Education, July 18, 1986.
[155] Hearing, p. 342.
[156] Ibid., p. 282.
[157] Op. Cit., Inspector General, Bliss Interview, July 22, 1986, p. 2.
[158] Ibid. Interview with Richard McCann, August 25, 1986, p. 3.
[159] Hearing, p. 284.

backdating had occurred. The cursory review found that backdating was a nationwide problem. In regard to the backdating of investigative Letters of Finding, an OCR report stated:

> In Region IV, discrepancies were found in 14 of 32 cases examined in that subject area; in Region VI, discrepancies were found in 18 of 26 cases; in Region VII, in 17 of 36 cases; in Region IX, in 7 of 20 cases; and in Region X, in 7 of 20 cases.[160]

The *Adams* order permits a certain percentage of cases to be "tolled," that is, to waive the time requirements if there are legitimate reasons for the investigation to be delayed, such as the unavailability of a witness. The OCR internal review found that the tolling privilege was routinely abused.

> The reviews disclosed that Regions III, IV, VI, IX and X routinely initiated tolls without an adequate basis in the tolling provisions of the *Adams* order or OCR written guidance interpreting those provisions. Cases were systematically tolled when a recipient operating in good faith simply could not meet OCR's timeframes for providing information or was otherwise delayed in providing information. In such circumstances, some Regions (IX and X) incorrectly invoked the "witness unavailability" tolling provision. In the same circumstances, other Regions (III and IV) incorrectly invoked the "denial of access" tolling provision. File documents and the comments of some of the [regional directors] suggest the likelihood that much of the incorrect tolling was the direct result of misinterpretations of the tolling provisions of the *Adams* order. An absence of monitoring the initiation of tolls on the part of some senior managers also was apparent. The result is that a large number of tolls examined in those Regions may be considered as having been incorrectly initiated. The reviews also disclosed instances where tolls continued well beyond the time that they should have, regardless of whether the toll was originally appropriately initiated under the *Adams* order.[161]

The committee finds the OCR review to be incomplete. In fiscal year 1986, OCR received 2,648 complaints[162] yet its internal review of compliance with the *Adams* timeframes examined 564 files, representing only 21 percent of the cases. The committee believes every file should have been examined because more is involved than the misleading of a Federal court, a serious a matter in itself. The improper tolling of cases can cause undue delays in correcting illegal discrimination, delays that are impermissible by law and strictly prohibited by the *Adams* order. The subcommittee's review

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[160] "Consolidated Report of Reviews of Regional Accuracy in Performing, Recording, and Reporting Acts Critical to Compliance with Time Frames Established in *Adams* v. *Bennett (Adams)*," From Edward A. Stutman, Attorney Advisor to the Assistant Secretary for Civil Rights and Linda A. McGovern, Acting Regional Civil Rights Director, Region V, to Alicia Coro, Acting Assistant Secretary for Civil Rights, U.S. Department of Education, December 5, 1986, p. 3.

[161] Ibid., pp. 3–4.

[162] Op. Cit., "Annual Report," p. 18.

found no evidence that OCR had attempted to learn which cases were delayed improperly, and determine if illegal discrimination in those cases had been left uncorrected.

Another serious infraction committed by OCR involved contacting complainants and persuading them to withdraw complaints for the sole purpose of meeting that *Adams* due dates. Two OCR civil rights investigators in Region I told the IG that they had been ordered to ask complainants to drop cases. The IG investigative report stated:

> Vivian Bell, EOS [Equal Opportunity Specialist], stated that on two occasions she had been instructed to contact complainants and persuade them to withdraw their complaints in order to preclude the issuance of the pertinent LOF past its due date . . . Rance O'Quinn, EOS, advised he too had been instructed to contact a complainant and convince them to withdraw their complaint so that the LOF due date would not be missed.[163]

OCR has not interviewed regional staff to determine if other complainants were pressured to withdraw complaints. In fact, OCR's nationwide review entirely ignored the issue of pressuring witnesses to withdraw complaints.

The subcommittee chairman asked OCR to review its files for cases of witnesses who may have been improperly pressured to drop complaints. In response, OCR examined only one case. The office informed the subcommittee that all OCR staff involved in the case had resigned, and it could not determine if improper pressure was applied. OCR also told the subcommittee that the letter signed by the person withdrawing the complaint indicated no coercion was involved.[164]

The committee finds this response to be totally inadequate. The complainant was not contacted; instead, a letter was relied on to verify that no coercion took place. Also, OCR did not contact the staff involved. The fact that the staff had resigned is not an excuse for not attempting to locate and interview them. And there is no excuse for having examined only one case without asking regional staff if they knew of any other cases. The IG report mentions three allegations. Yet only one was reviewed.

According to testimony before the subcommittee, OCR staff involved in the backdating of documents were primarily motivated by their concerns about salary increases. It seems that their merit pay increases were tied to the court deadlines. This matter was discussed during the questioning of Mr. O'Quinn at the subcommittee's hearing.

> Mr. O'QUINN. . . . Well, it was a concern of many of the employees that they were being given "failure to meet internal timeframes"—internal timeframes are timeframes that are less than the average *Adams* timeframes. They are used as benchmarks for measurement for performance purposes. They were failing to meet the internal time-

[163] Op. Cit., Inspector General, p. 3.
[164] Hearing, p. 285.

frames, but yet they felt it was unfair that the supervisors who had control over many of these cases that they were working on were backdating them and meeting their timeframes, so they were concerned about the unfairness of the process.

Mr. WEISS. Now what hinged on these performance ratings? What was the consequence or the benefit of having not met the deadlines or having met the deadlines?

Mr. O'QUINN. OK. Well, a failure to meet a performance element in a critical element could result in a minimally, well, an unsatisfactory rating, or it could result in a minimally satisfactory rating.

The adverse effect on employees is that with an unsatisfactory rating, they could be subject to dismissal if they could not bring the performance to a level of acceptance. With a minimally satisfactory rating, these people were denied within-grade increases.

Mr. WEISS. So that it was a matter of dollars and cents?

Mr. O'QUINN. It was a matter of dollars and cents.[165]

The committee believes it is imperative for DOED to know the exact nature and extent of the backdating of documents, improper tolling of cases, and persuasion of complainants to drop charges. These actions drastically undercut the basic premise of the *Adams* order, which is to remedy OCR's historical penchant for delays. The remedy was ordered by the court to ensure that civil rights laws are enforced. Without the *Adams* order, OCR would make a mockery of the Nation's civil rights laws and, without the remedy, discrimination would exist unabated. The court cannot continue to monitor OCR's progress without knowing the extent to which it has been misled.

IV. RECOMMENDATIONS

A. OCR SHOULD ISSUE FINDINGS ON TITLE VI COMPLIANCE IN THE HIGHER EDUCATION SYSTEMS OF THE 10 STATES WHOSE DESEGREGATION PLANS HAVE EXPIRED

One full school year has passed and another has begun since the desegregation plans in the 10 States examined in this report expired. Two years have passed since most of the OCR site reports and regional status reports were completed. Yet OCR has made no determination regarding Title VI compliance in those States. The committee believes that there is extremely solid evidence that the vestiges of the illegal, dual systems of higher education in the States remain as remnants of blatant discrimination. The illegal discrimination today is more insidious, but it still exists, nevertheless. The desegregation plans have obviously failed to correct the problem, but they at least offered some minimal protections to minority students seeking higher education. Now even the minimal protections have been removed. Given OCR's history of reluctance in enforcing civil rights laws, it is likely that the Federal courts will ultimately decide the fate of higher education desegregation in

[165] Ibid., p. 339.

the 10 States. But in order for such due process to ensue, OCR must issue findings now. It has no legal basis to do otherwise.

B. OCR SHOULD CONDUCT A COMPREHENSIVE INVESTIGATION OF ALL IMPROPER ACTIVITIES IN CONNECTION WITH ATTEMPTS TO FALSIFY DOCUMENTS AND MISLEAD THE *ADAMS* COURT

The committee does not believe OCR or the DOED IG conducted a thorough investigation of the backdating of documents, improper tolling of investigative cases, and the improper persuasion of complainants to drop charges of discrimination. Each of these improper activities was intended to dupe the U.S. Federal District Court in the *Adams* case and may have resulted in delays or inaction in cases of illegal discrimination. DOED does not know the extent of the problem, if it continues, or even if investigations were halted of cases involving violations of civil rights laws. Given the high percentages of cases found to be associated with these activities, the committee believes OCR should require its staff to determine how many files were involved in improper actions and what was the involvement of Central Office staff.

SEPARATE VIEWS OF HON. JIM LIGHTFOOT, HON. FRANK HORTON, HON. ROBERT S. WALKER, HON. WILLIAM F. CLINGER, JR., HON. AL McCANDLESS, HON. LARRY E. CRAIG, HON. HOWARD C. NIELSON, HON. JOSEPH J. DioGUARDI, HON. BEAU BOULTER, HON. DONALD E. "BUZ" LUKENS, HON. AMORY HOUGHTON, JR., HON. J. DENNIS HASTERT, HON. JON L. KYL, HON. ERNEST L. KONNYU, AND HON. JAMES M. INHOFE

The title of this report, "Failure and Fraud in Civil Rights Enforcement by the Department of Education", seems to indicate that civil rights violations are going unchecked in the nation's education institutions and programs. We won't deny the fact that the Committee's investigation has revealed problems in the Office for Civil Rights (OCR). However, we believe the picture is not as bleak as the Committee suggests.

The Office for Civil Rights has an important responsibility in seeing that statutes prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or age in all programs and activities that receive funds from the Department of Education are vigorously enforced. Its duties must neither be taken lightly nor ignored.

At the same time, however, it is important that we understand the framework under which OCR operates. The *Adams* Order timeframes and reporting requirements have placed considerable burdens and pressures on the Office. It is not surprising, therefore, that problems, such as the improper handling of documents, have occurred. It is in this regard that the Committee's oversight responsibilities are important.

Moreover, we can agree with the Committee's concerns about eliminating vestiges of illegal segregation. Segregation and discrimination have no place in our society, whether it is in the workplace or in education institutions. We must strive for equal educational and employment opportunities for all Americans.

We can also agree with the Committee's recommendation that OCR promptly issue final determinations on the expired higher education desegregation plans of ten states. We acknowledge that OCR has a tremendous amount of material to review before making final determinations. However, we firmly believe that decisions should be made shortly so that if further steps are necessary, they then can be implemented.

It is at this point, though, that we must depart from the Committee's findings that the ten states under these desegregation plans have not eliminated the vestiges of illegal segregation. The review is not yet complete, and we believe the final determinations should be made following completion of a thorough review of the Office for Civil Rights.

However, we would like to express our disappointment with the Committee's position that OCR should rely on the achievement of numerical goals to determine state compliance with the expired desegregation plans. During the Subcommittee's April 23, 1987, hearing, then Acting Assistant Secretary Alicia Coro testified that OCR had not yet determined how they would evaluate these plans. But, she did make it clear that OCR would look at factors other than just the achievement of numerical goals. She indicated that OCR would take into consideration the accomplishment of measures and a state's good faith efforts to comply with the plan. We support OCR in this regard.

The 1978 criteria used to develop these higher education desegregation plans also indicate that rigid reliance on the achievement of numerical goals was not intended. The criteria state that:

> The Department is opposed to arbitrary quotas. Failure to achieve a goal is not sufficient evidence, standing alone, to establish a violation of Title VI.

In our view, the sole use of statistical data to determine if states have eliminated the vestiges of illegal segregation runs counter to the goal of eliminating discrimination. Imposing additional numerical goals on the states that have not achieved past goals will not resolve the problem of discrimination. An analysis of the measures which have or have not worked would be much more in keeping with the goal of eliminating illegal segregation than simply reviewing numbers.

Another point upon which we must separate ourselves from the Committee's findings is that the Office for Civil Rights participated in a "nationwide scheme" "to dupe the U.S. Federal Court in the *Adams* case". We agree with the Committee's views that the backdating of civil rights documents and the improper "tolling" of civil rights cases are serious offenses. We would like to point out, however, that the Office for Civil Rights did not take these problems lightly, as the Committee suggests.

In fact, soon after then Acting Assistant Secretary Alicia Coro was made aware of the backdating of documents in the Boston regional office, she initiated a nationwide review of the other regional offices to determine if backdating was occurring in other regions. In response to reports that backdating was a problem and that improper "tolling" was occurring in other parts of the country, the Acting Assistant Secretary implemented a series of corrective actions, which we note, the Committe's findings fail to mention.

One of the corrective measures was the issuance of detailed written guidance to regional offices on the implementation of the *Adams* order, in particular, the "tolling" of time frames. Since then, the number of "tolled" cases has dramatically been reduced. For example, on February 26, 1986, there were 258 cases nationwide in a "tolled" status; one year later there were only 74. This represents a 71 percent decline in the number of cases being placed on hold. We consider this a significant improvement.

We also take exception to the Committee's finding that OCR's activities to determine if problems existed in other regional offices were incomplete. We believe that if OCR implemented the Committee's recommendation that every civil rights file be examined to de-

termine if irregularities existed, then civil rights enforcement would likely stop dead in its tracks. We believe this would be a serious misallocation of scarce resources, and feel instead that OCR's swift review of the problem and implementation of corrective measures were the best way to handle this serious problem.

And finally, we must separate ourselves from the Committee's findings that this was a nationwide scheme, or concerted effort, on the part of OCR to mislead the federal court. We would like to point out that once problems were discovered, OCR reported the problems to the *Adams* Court in September 1986, with follow up reports to the Court in October 1986 and May 1987. OCR's disclosure of the problems found does not indicate to us that there was a concerted effort on the Office's part to hide information.

We strongly agree with the Committee that the problems uncovered were serious and deserved to be thoroughly investigated. One backdated document or improperly "tolled" case were one too many. We would therefore recommend to OCR that it continue to monitor closely the regional offices to make absolutely sure that documents are handled properly and promptly.

We share the Committee's conviction that our civil rights laws should be vigorously enforced by the Department of Education's Office for Civil Rights. To the extent that the Committee's investigation assists OCR in accomplishing this goal, we offer our encouragement. But, by the same token, we would hope that those who review this report will remember that although OCR is not without its faults, the Office shares our common goal of eliminating discrimination in education institutions and programs.

JIM LIGHTFOOT.
FRANK HORTON.
BOB WALKER.
WILLIAM F. CLINGER.
AL MCCANDLESS.
LARRY E. CRAIG.
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AMO HOUGHTON.
J. DENNIS HASTERT.
JON L. KYL.
ERNIE KONNYU.

ADDITIONAL VIEWS OF HON. JAMES M. INHOFE

The Department of Education's Higher Education Desegregation Plans have received much attention by this Committee. The Department's Office of Civil Rights (OCR) has focused its attention on the activities of ten States. It is very important to point out that these plans involve ten complex and dynamic situations affecting 254 separate institutions of postsecondary education.

The Office of Civil Rights has conducted extensive evaluation of the higher education institutions in question and I think it is premature of the Committee to evaluate the actions of OCR until OCR has issued evaluation letters to the States. It seems to me that it is inappropriate for the Committee to judge OCR's efforts based purely on statistical data. More variables must be taken into consideration. For example, if you were to make decisions based solely on statistical data, you would find that the state university system of New York is more segregated than Oklahoma's higher education system. In 1985, 6.4 percent of students enrolled in the Oklahoma higher education system were black, while only 8.8 percent of Oklahoma's 12th grade students were black. In comparison, 6.3 percent of the students enrolled in New York's higher education system were black, while more than 12.4 percent of New York's 12th grade students were black.

JAMES M. INHOFE.